

# Montana Legal Services Association

## Know Your Rights When Dealing with a Debt Collector



Providing, protecting, and enhancing access to justice.

Rev. 11/09/18



## Know Your Rights When Dealing with a Debt Collector

**Description:** Know your rights and understand your options when dealing with a debt collector. Download forms you can use to protect your rights.

If you live in Montana, this article will help you:

- Know your rights when dealing with a debt collector
- Understand your options when working with a debt collector
- Provide you letters that you can send to a debt collector to protect your rights, depending on what is best for your situation.

### Summary

A debt collector is anyone who regularly collects debts for others. The Fair Debt Collection Practices Act (FDCPA) is a federal law that makes it illegal for a debt collector to harass, abuse, mislead, deceive or be unfair to you, **whether or not you owe the debt**. This law covers personal, family and household debts. The law does not cover business or commercial debts. The original creditors who you borrowed from are not included in the Fair Debt Collection Practices Act. For example, if you owe money to a landlord or credit card company, the law does not apply to these companies. But, if a third party debt collector attempts to collect a debt from the landlord or credit card company, then the law does apply to the debt collector. This article will talk about what debt collectors cannot do, and what you can do when working with a debt collector.

### What are debt collectors not allowed to do?

Remember, a debt collector is anyone who regularly collects debts for others. It is illegal for a debt collector to harass, oppress, or abuse you. For example, a debt collector:

- Cannot threaten to physically harm you, your family, or property;
- Cannot call you before 8 am or after 9 pm;
- Cannot call you at work if they know your employer doesn't allow such calls;
- Cannot repeatedly call to harass you;
- Cannot use abusive, profane, or threatening language;
- Cannot tell others about your debt (except a credit bureau);
- Cannot pretend or lead you to believe that they are attorneys or government representatives;
- Cannot tell you that you have committed a crime by not paying the debt or that you will be arrested if you don't pay the debt immediately;
- Cannot threaten to do things they cannot actually do, or do not intend to do;
- Cannot make you accept collect calls or pay telegram fees; and
- Cannot remain anonymous. Debt collectors must tell you who they are and who they work for when they call.

## **What can I do if a debt collector broke the law?**

You may be able to sue a debt collector for breaking the law. A judge may award you \$1,000 in damages, plus any other actual damages and attorney fees. Make sure you keep a written record any time that a debt collector does anything that you think is illegal. Having this information may be helpful if you have to go to court.

You have a limited amount of time to act if the debt collector broke the law. If you think a debt collector broke the law, talk to a lawyer right away. You can apply for free legal help from Montana Legal Services Association.

## **What must a debt collector do?**

Within five days after you are first contacted, the debt collector must send you a written notice. This notice must tell you:

- The amount of money you owe,
- The name of the original creditor, and
- What to do if you believe you don't owe the debt or the full amount they are trying to collect.

## **What are my options for dealing with a debt collector?**

Remember, it is illegal for a debt collector to threaten you with jail time, or any of the other things listed above that debt collectors cannot do. You have the right to decide how to work with a debt collector and what debts you pay off first. When working with a debt collector you have the right to:

- Ask for validation of the debt,
- Dispute the debt,
- Keep track of any time you think the collector breaks the law,
- Sue the debt collector for breaking the law,
- Send a cease contact letter,
- Work out a payment plan,
- Consider filing for bankruptcy.

It is always a good idea to ask for proof that you owe the debt and keep track of any times you think the debt collector breaks the law. The other options depend on your own circumstances.

## **What should I do when a debt collector contacts me?**

When you are working with a debt collector it is a good idea to:

1. Send a Debt Validation Letter if the debt collector did not give you all of the information they are required to by law
2. Send a Debt Dispute Letter
3. Get everything in writing
4. Take notes for yourself

### **Debt Validation**

Within five days of contacting you, a debt collector must tell you in writing:

- How much they think you owe,
- The name of the original creditor,
- That you have the right to dispute the debt within 30 days, and
- That if you dispute the debt, the creditor will give written verification of the debt.

If the debt collector does not give you all of this information in writing, you can send them a “Debt Validation Letter.” The Debt Validation Letter says that the debt collector did not give you all of the information they are supposed to, and that may be against federal law. The letter also asks the debt collector to not contact you again unless they send you all information required by federal law. You can download our Debt Validation Letter and send it to a debt collector.

### **Disputing a Debt**

You have the right to dispute a debt within 30 days after the debt collector contacts you. If you do not agree with the debt, or even the amount, you can send the debt collector a Debt Dispute Letter. The Debt Dispute Letter asks the debt collector to:

1. Send the original creditor’s name and address
2. Send verification of the debt
3. Send a complete accounting of the original debt
4. And, notify all Consumer Reporting Agencies to whom the debt collector has reported the debt that you are disputing it.

If you send a Debt Dispute Letter within 30 days after the debt collector has contacted you, or has validated the debt, they must stop contacting you until they verify the debt. The debt collector can verify the debt by sending you proof of the debt, like a copy of the original bill.

It is always a good idea to send a debt dispute letter, even if you are fairly sure that you owe the debt. At the very least it will force the debt collector to verify what you owe and will stop the collection process for a short time. The debt collector may not contact you

again until they send you proof of the debt. The debt collector may restart collection efforts after they send you proof of the debt.

**Important:** Make a copy of any letter you send to a debt collector. Keep your copy in a safe place. Send all letters by certified mail, return receipt requested. Save the certified mail receipt and the green return receipt with your copy of the letter. Do this so that you have proof that you sent the letter and that the debt collector received it. This proof may be important if you have to go to court later.

To dispute a debt, you can download our Debt Dispute Letter and send it to a debt collector.

### **Get it in writing**

You do not have to talk to a debt collector over the phone. Debt collectors prefer to talk to you because it works to **their** advantage. Written communication works to **your** advantage because you have a record of everything that they say. Debt collectors are less likely to break the law if they have to put what they say in writing.

Make sure you keep copies of all letters the debt collector sends to you. The Fair Debt Collection Practice Act (FDPA) includes written letters, and not just phone calls. Keeping copies of letters from a debt collector may be useful later on if you have to go to court.

It is not always practical to work with a debt collector only by writing. If you do need to talk over the phone, keep a journal with you to record every time you talk with a debt collector. For each phone call, write down:

- Date and time of the call
- If the debt collector called you
- Name of the debt collection company
- Name and/or employee number of the person you talked with
- Account number of the debt you talked about
- Any promises that the debt collector made
- Any threats the debt collector made
- Any of the other things we talked about earlier that are illegal for a debt collector to do.

If you agree to anything during a phone call, it is a good idea to ask for a copy of that agreement in writing. Keep that agreement safe.

If the debt collector will not send you the agreement in writing, you can write them a letter to confirm the agreement. Include the date and time you talked, who you talked to, and the terms of the agreement. Send this letter with your first payment to confirm the plan you agreed to. Keep a copy for yourself. Keep your copy safe.

## Take notes:

When working with a debt collector, it is a good idea to keep notes of every phone call to help protect your rights. You can download our “Debt Collector Phone Call Checklist” at the bottom of this article to help you take notes.

## Can I negotiate with debt collectors?

Yes. You have the right to negotiate with debt collectors. But, it is a good idea to talk to a lawyer before you negotiate. There are laws that say that after so many years, a debt collector cannot sue someone to collect on that debt. These laws are known as the “statute of limitations.” You can restart the statute of limitations by simply making a payment on an old debt. The statute of limitations laws are complicated, so it is a good idea talk to a lawyer before making a payment on older debts. You may be able to get free legal advice on your debts from Montana Legal Services Association or Ask Karla.

**Be aware:** It is the debt collector’s right to sue you for failure to pay the full amount that they claim you owe. If you are not able to come up with a payment plan, then the debt collector may take you to court. The judge may then order you to pay the full amount, plus the costs of the lawsuit and possibly attorney fees.

## Can I stop a debt collector from contacting me?

Yes. You can stop a debt collector from contacting you by sending them a “Cease Contact” letter. After getting the letter, the debt collector cannot contact you again, except to say that they won’t contact you again or that they will take other action like filing a lawsuit against you.

It is illegal for a debt collector to keep contacting you after getting your cease contact letter. Like any other letters you send, make a copy and save it in a safe place. Send the letter by certified mail, return receipt requested. Save the certified mail receipt and the green return receipt with your copy of the letter.

**Be aware:** A cease contact letter **does not** make the debt go away. It only forces the debt collector to stop contacting you. The debt collector can still take you to court to try to collect your debt. If a debt collector wins a lawsuit against you, they may be able to collect the debt by garnishing your wages or taking money from any bank account with your name on it.

Usually, it’s a good idea to send a cease contact letter if you:

- Are going to file bankruptcy
- Or, are collection proof

If you have questions about bankruptcy or if you think you might be collection proof, talk to a lawyer.

If you'd like a debt collector to stop contacting you, download our Cease Contact Letter.

### **What happens if a debt collector sues me?**

You have the right to file a written response to a debt collection lawsuit filed against you. That response is called an Answer. If you do not file a written answer with the court within a specific number of days after you were served with the court papers, the debt collector may get everything that they ask from you. This is called a default judgment.

In your written response you must deny or admit each of the statements the debt collector or their attorney makes in the complaint. For example, if you do not owe the debt, you can deny that in your answer. You can also bring up a counterclaim if the debt collector broke the law. For example, if the debt collector violated the Fair Debt Collection Practice Act by threatening or harassing you.

If you are sued by a debt collector it's a good idea to talk to a lawyer right away. To learn more, read our article on How to Answer if You Get Sued.

### **What happens if a debt collector wins a lawsuit against me?**

When a debt collector sues you and wins the court will award the collector a judgment. Even if a debt collector gets a court judgment against you, it does not always mean you will be forced to pay the debt. The judgment gives the debt collector the right to take some of your wages and/or property. However, if you don't own much and don't earn much, the debt collector may not be able to get anything from you. There are federal and state laws that prevent debt collectors from taking a certain amount of your income and certain types of your property. If all of your income and property are protected by these laws, you are called "collection proof" or "judgment proof."

If you are collection proof, a debt collector is not allowed to collect the money you owe unless your financial situation changes. It is a good idea to check with a lawyer to make sure that you are collection proof. If you are collection proof and a debt collector takes money from you, you only have 10 business days to file paperwork with the court to ask to get it back. Learn more by reading our article on How to Get Money Back from Debt Collectors.

If you are not collection proof, the debt collector can collect on the judgment by garnishing your wages and/or taking money from your bank account. There are laws that say how much money someone can take from your wages or account. If someone takes too much, you have only 10 business days to file a notice with the court to get it back. If you think someone may have taken too much from your paycheck or bank

account, learn more by reading our article on [How to Get Money Back from Debt Collectors](#).

## **Summary**

A debt collector is anyone who regularly collects debts for others. The Fair Debt Collection Practices Act (FDCPA) is a federal law that makes it illegal for a debt collector to harass, abuse, mislead, deceive or be unfair to you, whether or not you owe the debt. This law covers personal, family and household debts.

Within five days after you are first contacted, the debt collector must send you a written notice. This notice must tell you:

- The amount of money you owe,
- The name of the original creditor, and
- What to do if you believe you don't owe the debt or the full amount they are trying to collect.

It is a good idea to talk to a lawyer right away when you are contacted by a debt collector. You have several options when dealing with a debt collector:

- Ask the debt collector to validate the debt,
- Ask for proof that you owe the debt and the full amount they say,
- Keep track of any time you think the collector breaks the law,
- Sue the debt collector for breaking the law,
- Send a cease contact letter,
- Work out a payment plan,
- Consider filing for bankruptcy.

Your best option depends on your own situation, and a lawyer can help you decide what is best for you.

## **Take Action**

### **Talk to a lawyer**

If you still aren't sure what your best options are, it's a good idea to talk to a lawyer. If you think a debt collector may have broken the law, talk to a lawyer. If a debt collector contacts you about an old debt, talk to a lawyer. You can apply for free legal help by following the link to the Montana Legal Services Association Online Intake under "Need More Help?"



### **Ask for debt validation**

If the debt collector does not give you in writing all of the information they are supposed to by law, you can send them a “Debt Validation Letter.” You can download the “Debt Validation Letter” by following the link at the bottom of this article.

### **Ask for verification**

Within 30 days of getting written notice of a debt, you can send the debt collector a “Debt Dispute Letter.” The debt collector may not contact you again until they send you proof of the debt. The debt collector may restart collection efforts only after they send you proof of the debt. Download the “Debt Dispute Letter” by following the link at the bottom of this article.

### **Take notes**

It’s a good idea to keep track of all of your phone calls with debt collectors to protect your rights. Download the “Debt Collector Phone Call Checklist” at the bottom of this article.

### **Send a cease contact letter**

It is illegal for a debt collector to contact you after getting a cease contact letter, other than to say they won’t contact you again or will take another action like going to court. Download our “Cease Contact Letter” by following the link under this article.

### **Work out a payment plan**

You have the right to negotiate with debt collectors. If you are not able to come up with a payment plan, then the debt collector may take you to court. The judge may then order you to pay the full amount, plus the costs of the lawsuit and possibly attorney fees.

Make sure you get all agreements in writing. Use your best judgment when negotiating with a debt collector. Remember to talk to a lawyer about the statute of limitations first before making any payments on an old debt. You can also learn about what bills to pay when you cannot pay them all.

### **Learn about Bankruptcy**

If you are overwhelmed by debt, you might want to think about bankruptcy. Filing for bankruptcy is a major decision, so make sure you understand what you need to know when thinking about bankruptcy.

## How do I get more help?

**Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:**

- Apply anytime online at [mtlsa.org](http://mtlsa.org);
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

## What help can I find at MLSA?

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.