

Unfair Debt Collection
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- I. Persons and transactions covered by the Fair Debt Collection Practices Act (“FDCPA”).
 - A. “Debt” covered by the Act. 15 U.S.C. § 1692(5).
 - 1. Consumer, not commercial debts.
 - 2. Contractual debts vs. tort debts.
 - B. “Debt Collector.” Section 1692(6).
 - a. Generally included.
 - (1) Collection agencies.
 - (2) Attorneys.
 - (3) Creditors using a false name.
 - (4) Creditors collecting for another person.
 - (5) Repossession and foreclosure companies (for purposes of Section 1692f(6)).
 - (6) Suppliers or designers of deceptive forms.
 - (7) Purchasers of debt after default.
 - (8) For profit credit counselors.
 - (9) Check guarantee companies.
 - b. Generally excluded.
 - (1) Creditors collecting their own debts.
 - (2) Purchasers of debt before default.
 - (3) Government employees.
 - (4) Collectors of business debts.
 - (5) Non-profit credit counselors.
- II. Consumer protections and rights under the FDCPA.
 - A. Least sophisticated consumer protected.
 - B. Liberal construction.
 - C. Strict liability.
 - D. Contacts at unusual or inconvenient times or places prohibited. Section 1692(c)(a)(1). (8:00 a.m. to 9:00 p.m.). Workplace not if debt collector knew or had reason to know not allowed by employer.
 - E. No contact if collector knew consumer represented by attorney. Section 1692(c)(a)(2).
 - F. Informing most third parties of debt is prohibited. Section 1692c(b). Spouse contact allowed. Obtaining location information is strictly regulated. Section 1692a(7).

- G. Right to stop collection contacts. Section 1692c(c).
- H. Harassing, oppressive and abusive conduct prohibited. Section 1692d.
 - 1. Threats of violence or criminal conduct.
 - 2. Obscene, profane and abusive language.
 - 3. “Deadbeat” list.
 - 4. Advertising debt for sale to coerce payment.
 - 5. Repeated telephone calls intended to harass.
 - 6. Provide meaningful disclosure of identity. Aliases allowed.
- I. False, deceptive or misleading representations prohibited. Section 1692e.
 - 1. General deception.
 - a. Objective standard applied to protect the least sophisticated consumer.
 - b. “Final demand.”
 - c. Threat of suit.
 - d. “Take your house,” and “take your paycheck.”
 - 2. False representation of the character, amount or legal status of a debt.
 - a. Check fees.
 - b. Late payment fees
 - c. Interest rate.
 - d. “Will garnish” when no judgment.
 - 3. False representation of collector’s services and compensation.
 - a. “50% collection fees.” *See Express Recovery Services, Inc. v. Shewell*
 - b. Check fees.
 - 4. False implication that collector is attorney.
 - 5. Implying that payment will result in arrest, garnishment, attachment, seizure if such action is unlawful.
 - 6. Threatening unlawful or unintended action.
 - a. False threats of legal action.
 - b. False threat to report to credit reporting agency.
 - 7. Threat that transfer of debt for collection will eliminate defenses to the debt.
 - 8. Misrepresenting that debtor committed a crime or conduct intended to disgrace the consumer.
 - 9. Threat to communicate credit information to credit reporting agency that is false.

10. Collector must disclose that communication is to collect a debt in initial communication.
 11. False implication that account transferred to innocent purchaser.
 12. False implication that documents are legal process and false implication that legal process is not legal process.
 13. Use of business name other than collector's true name.
 14. False implication that collector owns or operates a credit reporting agency.
- J. Unfair or Unconscionable collection means prohibited. Section 1692f.
1. Collecting an amount not permitted by law.
 - a. Check fees.
 - b. Collection fees. Many states limit the amount; not Utah.
 - c. Attorney's fees when no contract.
 2. Post dated check restrictions.
 3. Causing expenses to the debtor by concealing the collection purpose of call or letter.
 4. Threats to repossess when there is no right to repossess.
 5. No postcards and collection symbols on envelopes.
- K. Validation of debt. Section 1692(g). Other language cannot overshadow, confuse, or contradict validation rights.
- L. Restrictions against suing consumer in inconvenient forums. Section 1692i. Consumer residence or where contract signed.
- III. Private FDCPA cause of action.
- A. Damages. Section 1692k.
1. Actual.
 2. Statutory.
 - a. Up to \$1,000.00 per plaintiff per defendant. Not up to \$1,000.00 per violation.
 - b. Intent, frequency, persistence and nature of violation.
 3. Class action. Great FDCPA remedy for debt gouging. Violations usually systematic.
 4. Attorney's fees and court costs.

- IV. Defenses under the FDCPA. Section 1692k.
 - A. Short statute of limitations. 1 year.
 - B. Preempts state collection laws unless state laws are more protective of consumer.
 - C. Bona fide error.
 - D. Rooker-Feldman. Attacking judgment in state court collection suit.
 - E. Good faith conformity with formal FTC advisory opinion.
- V. Common law remedies.
 - A. Intentional or negligent infliction of emotional distress.
 - B. Invasion of Privacy.
 - C. Intentional interference with contractual relationships.
 - D. Defamation.
 - E. Malicious Prosecution and abuse of process. Not in Utah or 10th Circuit.
- VI. Utah state statute protections.
 - A. Utah Consumer Sales Practices Act. Title 13-11-1.
 - B. Utah Code Ann. § 12-1-1, et. seq.
- VII. Some Utah FDCPA Cases.
 - A. Snow v. Riddle, 143 F.3d 1350 (10th Cir. 1998).
 - B. Heintz v. Jenkins, 514 U.S. 291 (1995).
 - C. Ditty v. CheckRite, 973 F.Supp. 1320 (D.Utah 1997).
 - D. Ditty v. CheckRite, 182 F.R.D. 639 (D.Utah 1998).
 - E. Johnson v. Riddle, 305 F.3d 1107 (10th Cir. 2002).
 - F. Johnson v. Riddle, 443 F.3d 723 (10th Cir. 2006).
 - G. Express Recovery Services, Inc. v. Shewell, 2007 UT App 318 (Not FDCPA but related)