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SOLO

LAW OFFICE INFORMATION FOR SOLO & SMALL FIRM PRACTITIONERS



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When Debt Collectors Call

By Sonya A. Smith-Valentine

Maybe they received an injury due to an automobile accident. Maybe they purchased a car that turned out to be a lemon. Perhaps they were discriminated against in their workplace and lost their job. Or maybe they are getting a divorce. Whatever the reason, your clients are now strapped for cash and the debt collectors are calling.

Many people fall behind in their bills. On top of trying to keep food on

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the table and the lights on, your clients are experiencing severe anxiety every time the phone rings. Is it the debt collector calling again? Debt collectors add to your clients' initial problem with harassing and abusive phone calls at home and at work, and our clients don't want to talk about it due to embarrassment and shame.

The Fair Debt Collection Practices Act (FDCPA) is the federal law that regulates what actions a debt collector can and cannot take in trying to collect a debt. It covers personal, family, and household debts. Business and commercial debts are not covered. This underutilized law can help your clients sleep better at night without breaking into a cold sweat every time the phone rings.

The deck is stacked against your clients, as most do not know their rights in dealing with debt collectors. Many believe that they have to suffer with the abuse. On the contrary, owing the debt does not prohibit consumers from shielding themselves from these sharp practices and exercising their rights under the FDCPA.

Debt collectors may communicate by mail, in person, or by telephone. Debt collectors cannot contact a person at times or in places that they know are inconvenient, such as at work if the employer does not permit it. Debt collectors cannot contact a person before 8 a.m. or after 9 p.m.

If a written request is sent to the debt collectors demanding that they stop all communication, they must stop contacting the consumer. If the debt collectors are advised that the consumer is represented by an attorney, the debt collectors cannot communicate directly with the consumer; they can only contact the lawyer.

Debt collectors cannot contact any third parties about the debt specifically. Debt collectors can contact other people once (and once only) in an effort to locate the consumer. They cannot call family members or neighbors about the debt. Debt collectors are not permitted to ask family and neighbors to pass on phone messages or tell other people that they are attempting to collect a debt.

Debt collectors may not use any language, communication, or conduct to harass, oppress, or abuse any person. This includes the use of threats of violence or harm to the person, property, or reputation; threats of arrest; using obscene or profane language; or calling people without identifying themselves.

False statements are also prohibited. For example, a debt collector cannot falsely imply that he or she is an attorney or government representative. They cannot falsely imply that a person committed a crime by not paying a debt. Debt collectors cannot misrepresent the character, amount, or legal status of the debt.

Debt collectors routinely report credit information to the major credit bureaus but often fail to report that a debt is disputed, as required by law. Further, after a debt is discharged in bankruptcy some debt collectors nevertheless continue collection efforts or try to get the consumer to reaffirm the debt.

Consumers are entitled to file a lawsuit against any debt collector who violates the FDCPA. In short, the FDCPA allows a consumer to recover actual damages, statutory damages of up to \$1,000, and attorney fees and costs.

Sonya A. Smith-Valentine is a member of the Valentine Legal Group, LLC, in Greenbelt, Maryland. She concentrates her practice on debt collection harassment and credit reporting disputes. Visit her Web site at www.valentinelegal.com.

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