

Debt Collection Info Packet



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The Neighborhood Economic Development Advocacy Project (NEDAP) is a resource center that promotes financial justice and community-based economic development in low income communities and communities of color in New York City. For more information on NEDAP, its programs, coalitions, and publications, please visit our website, www.nedap.org.

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Legal Disclaimer

This packet provides general information and other sources of information for consumers and their advocates. This packet does not provide legal advice, which you can only get from an attorney.

KNOW YOUR RIGHTS!

DEBT COLLECTION ISSUES

Do not let debt collectors pressure you!



What happens if you fall behind on your payments on a credit card or personal loan? What are your rights if a debt collector buys your debt? It is important to know what debt collectors may and may not legally do.

What are your rights if a debt collector contacts you about a debt?

A federal law called the **Fair Debt Collection Practices Act (FDCPA)** protects you when dealing with debt collectors. This law does not erase any debt that you genuinely owe the creditor. But it does require debt collectors to treat you fairly and prohibits them from engaging in certain debt collection practices.

How may a debt collector get in touch with you?

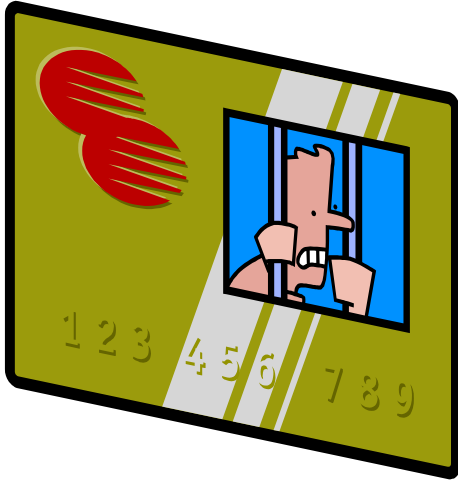
A debt collector may get in touch with you in person, by mail, telephone, telegram, or fax. Within 5 days of first getting in touch with you, the debt collector is required by law to send you a written notice telling you: (1) how much you owe; (2) the creditor's name; and (3) what you can do if you think there has been a mistake or you don't actually owe the money.

What is a creditor or a debt collector?

"Creditors" are companies or people that provide you with a credit card, personal loan, mortgage or other form of credit. When you owe money on credit you receive, you are a "debtor." If you fall behind on your payments, your debt may be given over to a "debt collector," who will try to contact you to get you to pay on that debt. Debt collectors can be agencies or lawyers.

Sources: Federal Trade Commission; Surviving Debt: A Guide for Consumers, National Consumer Law Center; Consumer Action and Information Center of Hawaii; Atlanta Legal Aid Society.

Examples of what a debt collector may NOT do:



- Harass or abuse you
- Call you before 8 am or after 9 pm
- Call you at work if he knows your employer disapproves of his contacting you at work
- Call you repeatedly to annoy you
- Make false threats or statements
- Use obscene or abusive language
- Engage in any other form of deceptive conduct or unfair harassment
- Contact your employer or neighbors about your debt

Debt collectors also MAY NOT:

- Take your wages or property without a court judgment
- Threaten to take your SSI and other protected income
- Threaten that you will be arrested or sent to jail, or that your children will be sent to foster care
- Seek to collect from other family members, unless they cosigned the debt

What can you do if you are contacted by a debt collector?

If appropriate, dispute the debt or send a cease letter (see sample cease and dispute letters, pages 11-12). If you can afford to repay the debt, consider negotiating with the debt collector (see pages 7-8).

What can you do if you think a debt collector has violated your rights?

- Keep a log of debt collection letters and telephone calls (see debt collection log, page 10).
- Record the calls. (In New York, it is legal to record your own phone calls. You can record all calls that you receive, and all calls that you make within the state. However, if you are going to call a debt collector in another state, you should check the rules in that state before recording the call.)
- Report any problems you have with a debt collector to the New York State Attorney General's office, the New York City Department of Consumer Affairs, and the Federal Trade Commission (see page 9). You can also contact a local legal services office for legal assistance.

Sources: Federal Trade Commission; Surviving Debt: A Guide for Consumers, National Consumer Law Center; Consumer Action and Information Center of Hawaii; Atlanta Legal Aid Society.

What Is Exempt from Debt Collection?

A debt collector must have a court judgment to garnish your paycheck, freeze your bank account, and/or seize personal property. However, certain types of income and property are always protected, even if there is a court judgment.

Is my income exempt?

Your income from any of the following benefits is exempt from debt collection:

- Supplemental Security Income (SSI)
- Social Security
- Public Assistance (PA)
- Alimony and Child Support payments
- Workers Compensation
- Unemployment Insurance
- Veterans benefits (VA)
- Public or private pensions



How much can be garnished from my wages?

Your paycheck may be garnished up to **10% of your gross income or 25% of your disposable income, whichever is less**. Disposable income is the amount of income you receive after deductions for taxes, social security, and unemployment insurance.

Weekly disposable income that is less than or equal to 30 times the Federal minimum wage is exempt from garnishment. If you take home less than or equal to **\$217.50 per week**, your income is exempt from garnishment.

Can my personal property be seized by a Marshal?

For most low-income people, a threat to seize your personal property is an empty threat. The following kinds of personal property are exempt from debt collection:

- Household goods, like furniture, clothing, and appliances
- One television
- Radio
- Personal items like wedding ring or watch
- If a computer or car is indispensable to your work, they can be exempt as "tools of the trade."

Sources: The Legal Aid Society, Federal Trade Commission

Disputing the Debt

Why dispute the debt?

Your dispute rights under the Fair Debt Collection Practices Act (FDCPA) are a powerful tool. Once you dispute the debt, the debt collector must stop all debt collection activities until it provides you with proof that you actually owe the debt. If the debt collector can't provide you with that proof, he or she will never bother you again. If the debt collector does provide proof of the debt, you will be in a better position to decide what to do about it.



What are the most important things to know about your right to dispute the debt?

Under the FDCPA, your right to dispute the debt has three separate components:

- Right to notice of the debt
- Right to contest the debt
- Right to verify the debt

There are time limits on some of these rights, so it is important to stay alert.

How do you dispute the debt?

Within thirty days of first receiving written notice of the debt, send a written **dispute letter** to the debt collection agency. You can use the sample dispute letter on page 12 as a model. To protect all your rights, you need to dispute the debt with a letter, not by telephone.

What happens if you don't dispute the debt within thirty days?

If you genuinely believe that you do not owe the debt, because you had paid the debt or it is not yours, you should send a dispute letter anyway.

Even if you believe you probably owe the debt, you can always stop the debt collector from contacting you by sending the debt collector a letter, called a "cease letter." Sending this letter does not cancel your debt and does not stop a collector from suing you, but it does require that the debt collector stop calling and writing to you about the debt. There is a sample cease letter on page 11.

Negotiating with Debt Collectors



Most people who are contacted by debt collectors eventually negotiate some kind of payment agreement -- even if they can't afford it. How can you decide whether you should negotiate a payment agreement? How can you get an agreement you can afford?

When should you negotiate a payment agreement with a debt collector?

If the debt is fairly recent, you are sure you owe it, and you can afford to make some payments, you should consider making a payment agreement.

When should you NOT negotiate a payment agreement with a debt collector?

It is probably not in your best interests to negotiate a payment agreement with a debt collector if:

- You can't afford to pay the debt collector because you have a limited income, and you need it all to pay higher priority debts.
- The debt is so old that the "statute of limitations" has expired or is about to expire. If you make even one payment, you will reset the statute of limitations and give the creditor an additional six years to sue you. (A "statute of limitations" is a time limit that controls how long after an event someone can sue you. In New York, the statute of limitations for a debt collector to sue you on a credit card debt is six years, dating roughly from your last payment.)
- You are the victim of ID theft, or you don't owe the debt for some other reason.
- Your income is exempt from debt collection (see page 5).

If you can't afford to make payments, what should you do?

Write a letter to the debt collector stating that you cannot afford to make payments at this time and that you would like the debt collector to stop contacting you. This kind of letter is called a "cease letter," and you can use the sample cease letter on page 11 as a model. Sending this letter will not cancel your debt. However, unless the debt collector is serving you with court papers, the cease letter requires that the debt collector stop calling and writing you about the debt.

Negotiation Dos and Don'ts



What should you do and not do when negotiating with a debt collector?

DO

- Learn about your rights.
- Prioritize your debts. Then decide how much you can afford to pay, and offer less. That way, you'll have some room to bargain. Be firm, and never agree to pay more than you can afford.
- Offer a lump sum, if you can afford it. Debt collectors will often agree to give you a substantial discount in exchange for a larger payment.
- Stay calm and in control, no matter what the debt collector says.
- Take good notes. If you can, record the conversation.
- Address your credit report. Insist that the debt collector remove the entry from your credit report. At the very least, try to get the debt collector to list your account as "paid in full" rather than "paid in settlement."
- Get the payment agreement in writing, including agreements to change your credit report.
- Negotiate at the end of the month. Debt collectors are paid based on how much they bring in each month, so you are more likely to get a good deal if you wait until the end of the month.

DON'T

- Agree to pay more than you can afford.
- Give a debt collector personal information, such as your bank account information.
- Allow a debt collector to take automatic deductions from your checking account.
- Try to explain your personal circumstances to the debt collector. The debt collector hears these stories every day and will not cut you a better deal out of sympathy.
- Pay a debt collector with a postdated check.

Do not pay until you have proof of your payment agreement in writing.

Debt Collection Resources

**Report problems you are having
with a debt collector to:**

**New York State Attorney General's
Office**

120 Broadway
New York, New York 10271
(800) 771-7755
www.oag.state.ny.us

**New York City Department of
Consumer Affairs**

42 Broadway
New York, 10004
(212) 639-9675 | 311
www.nyc.gov/dca

Federal Trade Commission

Consumer Response Center
Washington D.C. 20580
600 Pennsylvania Ave, NW
(877) FTC-HELP (382-4357)
www.ftc.gov

Find legal help:

**National Association of Consumer
Advocates (NACA)**

1730 Rhode Island NW, Ste 710
Washington, DC 20036
(202) 452-1989
www.naca.net

**The Association of the Bar of the
City of New York**

Lawyer Referral Service

(212) 626-7373
www.nycbar.org

**Free Legal Services for Low
Income Individuals**

www.lawhelp.org



COLLECTION COMMUNICATIONS LOG

INSTRUCTIONS:

1. **DOCUMENT** immediately every communication you have with any debt collector, whether by letter, by phone or by message. Make detailed notes of any conversations you have with a debt collector during the conversation. Keep this log next to your phone.
2. **SAVE** every single voice mail, answering machine, collection letter, and paper message. Don't throw anything away, including the envelopes that the collection letters come in or anything included with the collection letter.

Date of Call? (MM/DD/YY)	Time of Call? (00:00 AM)	How Many Minutes Did Call Last? (Approx.)	Phone Call, Voice Mail, Letter, Paper Message?	Collector's Name?	Collection Agency Name and Telephone Number?	What Did Collector Say? Amount Demanded? Payment Terms? Threats? Profanity? Harassment? Legal Action? Calls to Friends or Neighbors? Abuse? (Use as many lines or pages as needed)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

ATTORNEY CLIENT PRIVILEGED / ATTORNEY WORK PRODUCT

SAMPLE CEASE LETTER

Use this letter to tell a debt collector to stop contacting you.

You can send this letter at any time. Sending this letter does not cancel your debt.

Your Name
Your Street Address
City, State ZIP Code

Date _____

1 CERTIFICATE OF MAILING

Collection Agency's Name
Collection Agency's Address
City, State ZIP Code

2 Re: Name of Company you owe money to, Account Number :
(insert your account number here)

Dear Sir/Madam:

Please verify the above-referenced debt as required by the Fair Debt Collection Practices Act.

3
Aside from verification of the debt, do not contact me about this debt. The Fair Debt Collection Practices Act, 15 USC Section 1692c requires that you honor this request. Your cooperation will be appreciated.

Sincerely,

(Your name and signature)

4 cc: (Insert Name of Company)
Federal Trade Commission – Consumer Response Center
New York City Department of Consumer Affairs

Source: *The Senior Legal Hotline, Atlanta Legal Aid Society, Inc.*

1 Make sure to mail your letter with a certificate of mailing and keep the proof of mailing for your records.

2 Fill in the name of the company the collection agency says you owe money, and the account number. If you do not know this information, give the collection agency some other information so that it knows what debt you are talking about.

3 You might want to write a few lines here explaining your situation. For example, you may want to explain the circumstances that led to your falling behind on your bills. You might want to state that you want to pay the bills you owe, but cannot afford to pay them at this time. You might want to explain that your income is exempt from collection, if that is the case. You are not required to give any reason why you cannot or will not pay the alleged debt, but it could be to your benefit.

4 Send the original letter to the collection agency. You should make at least one copy of the letter. Send one to the company to which you originally owed the money. Keep the second copy of the letter for yourself, along with your proof of mailing.

You may also want to send a copy to these agencies:

FTC—Consumer Response Center
600 Pennsylvania Ave, NW
Washington, DC 20580

NYC Department of Consumer Affairs
42 Broadway
New York, NY 10004

SAMPLE CEASE LETTER (EXEMPT INCOME)

If you receive Social Security, Public Assistance, or other exempt funds, use this letter to tell a debt collector to stop contacting you.

You can send this letter at any time. Sending this letter does not cancel your debt.

Your Name
Your Street Address
City, State ZIP Code

Date _____

1 CERTIFICATE OF MAILING

Collection Agency's Name
Collection Agency's Address
City, State ZIP Code

2 Re: Name of Company you owe money to, Account Number: (insert your account number here)

Dear Sir/Madam:

Please stop contacting me about the above-referenced debt.

3 Furthermore, my only source(s) of income is/are _____.

All the money in my bank account is completely exempt from debt collection. If you attempt to restrain my exempt funds, you will cause me a severe hardship. If you attempt to restrain my exempt funds in disregard of this notice, I reserve the right to seek compensation from you for any damages caused by the restraint.

This letter is not meant in any way to be an acknowledgment that I owe this money.

Thank you for your attention to this matter.

Sincerely,

(Your name and signature)

4 cc: (Insert Name of Company)
Federal Trade Commission – Consumer Response Center
New York City Department of Consumer Affairs

Source: New York City Bankruptcy Assistance Project

1 Make sure to mail your letter with a certificate of mailing and keep the proof of mailing for your records.

2 Fill in the name of the company to which the collection agency says you owe money, and the account number. If you do not know this information, give the collection agency other information so that it knows what debt you are talking about.

3 State the source or sources of your exempt income:

- Social Security, SSD, or SSI
- Public Assistance
- Veterans Administration benefits
- Pensions (public and private)
- IRAs and other retirement accounts
- Child Support and Alimony
- Unemployment Insurance
- Workers Compensation
- Other government benefits
- 90% of wages or salary earned in the last 60 days
- Wages or salary less than \$175.50 per week after taxes

4 Send the original letter to the collection agency. You should make at least one copy of the letter. Send one to the company to which you originally owed the money. Keep the second copy of the letter for yourself, along with your proof of mailing.

You may also want to send a copy to these agencies:

FTC—Consumer Response Center
600 Pennsylvania Ave, NW
Washington, DC 20580

NYC Department of Consumer Affairs
42 Broadway
New York, NY 10004

SAMPLE DEBT COLLECTION DISPUTE LETTER

Use this letter to dispute a debt and to tell a collector to stop contacting you.

If you send this letter within 30 days from the date you first receive a debt collection letter, the debt collector must stop all collection activities until it verifies the debt.

Your Name
Your Street Address
City, State ZIP Code

Date _____

1 CERTIFICATE OF MAILING

Collection Agency's Name
Collection Agency's Address
City, State ZIP Code

2 Re: Name of Company you owe money to, Account Number : (insert your account number here)

Dear Sir/Madam:

I am disputing the above-referenced debt. Please verify this debt as required by the Fair Debt Collection Practices Act.

3 I dispute this debt because

Because I am disputing this debt, you should not report it to the credit reporting agencies. If you have already reported it, please contact the credit reporting agencies, inform them that the debt is disputed, and ask them to delete it from my credit report. Reporting information that you know to be inaccurate, or failing to report information correctly, violates the Fair Credit Reporting Act.

Aside from verification of the debt, do not contact me about this debt. The Fair Debt Collection Practices Act, 15 USC Section 1692c requires that you honor this request. Your cooperation will be appreciated.

Sincerely,

(Your name and signature)

4 cc: (Insert Name of Company)
Federal Trade Commission – Consumer Response Center
New York City Department of Consumer Affairs

1 Make sure to mail your letter with a certificate of mailing and keep the proof of mailing for your records.

2 Fill in the name of the company to which the collection agency says you owe money, and the account number. If you do not know this information, give the collection agency some other information so that it knows what debt you are talking about.

3 Explain why you are disputing the debt. Here are a few reasons why you would dispute a debt:
(1) You do not owe the debt;
(2) You are a victim of ID Theft;
(3) The debt has been paid (attach proof of payment, if available);
(4) You never received the item or service for which you were charged;
(5) The debt is past the Statute of Limitations.

4 Send the original letter to the collection agency. You should make at least one copy of the letter. Send one to the company to which you originally owed the money. Keep the second copy of the letter for yourself, along with along with your proof of mailing.

You may also want to send a copy to these agencies:
FTC—Consumer Response Center
600 Pennsylvania Ave, NW
Washington, DC 20580

NYC Department of Consumer Affairs
42 Broadway
New York, NY 10004

5 You may want to attach copies of documents that support your dispute, such as proof of payment or a police report.

SAMPLE LETTER TO YOUR BANK TO PROTECT EXEMPT INCOME

If you receive your Social Security, SSI, or other exempt income by direct deposit, use this letter to tell your bank not to freeze your account.

Your Name
Your Street Address
City, State ZIP Code

Date _____

IMPORTANT NOTE:

Some banks will not honor this letter. Still, it is a good idea to put your bank on notice that you have exempt funds.

1 CERTIFICATE OF MAILING

Bank's Name
Bank's Address
City, State ZIP Code

2 Re: Your Checking or Savings Account Number

Dear Bank Manager:

I have a dispute with a creditor which could result in that creditor seeking a restraining order against funds in my bank account.

3 All the funds in my checking account are directly deposited from _____.

Accordingly, all the money in the above bank account is exempt from seizure by restraining order under New York State law. Proof of my benefits award is attached. Please note that any restraint of exempt funds that you permit would cause severe hardship to me. Thank you for your attention to this matter.

Sincerely,

(Your name and signature)

Source: New York City Bankruptcy Assistance Project

- 1** Make sure to mail your letter with a certificate of mailing and keep the proof of mailing for your records.
- 2** Fill in your checking or savings account number.
- 3** State the source of your exempt income. Common examples of exempt income are: Social Security, SSD, SSI, Public Assistance, Veterans Administration benefits, Workers Compensation, Unemployment Insurance, public and private pensions, IRAs and other retirement accounts, child support, spousal maintenance, and earned income