

Fair Debt Collection Practices Act Outline

I. Scope

- A. What Is Covered?
1. Debts. § 803(5)
 - a. “any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes , whether or not such obligation has been reduced to judgment.”
 - b. Includes bounced checks and condominium fees.
- B. Who is Covered?
1. Third-Party Debt Collectors. § 803(6)
 - a. Business, the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another
 - b. Attorneys
 1. Exemption removed in 1986
 2. Commission staff position in Commentary and letters: Not a debt collector when acting like an attorney (legislative history and problem results)
 3. Heintz v. Jenkins: Attorneys who regularly collect debts through legal proceedings are DCs
 4. Recommendation in Annual Report: Attorney who pursues alleged debtors solely through litigation (or similar “legal” practices) is not covered by statute
 2. Creditors Using Name of a Third Party. § 803(6)
 - a. Creditor collecting debts who uses name indicating that third party is collecting.
- C. Who is Not Covered?
1. Generally: Creditors are not covered
 - a. Unless they have made themselves “debt collectors.” § 803(6)(A)
 2. Mortgage Servicers § 803(6)(F)
 - a. “debt which was not in default at the time it was obtained by such person”
 - b. Some companies acquire all their client’s accounts at an early stage and then claim exemption from FDCPA
 - c. Annual Report: Exemption should depend on nature of the overall business conducted by the party to be exempted, rather than the status of the obligations when the company obtains them.
 - (1) e.g., “activity is incidental to a business whose principal purpose is the servicing of current debts for others.”

II. Communications in Connection With Debt Collection

- A. First: What Debt Collector May Not Do When Communicating with Alleged Debtors
1. Circumstances When Contact Is Prohibited. Section 805
 - a. Unusual time or place or time or place known or which should be known to be inconvenient. § 805(a)(1)

- (1) Unless have other information, 8 AM to 9 PM
 - b. Collector knows consumer is represented by counsel with respect to the debt. § 805(a)(2)
 - (1) Unless attorney fails to respond in reasonable time or consents to direct communication with consumer
 - c. At work: When collector knows or has reason to know that employer prohibits consumer from receiving such communications. § 805(a)(3)
- 2. Harassing or Abusive Behavior Is Prohibited. § 806
 - a. Use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person. § 806(1)
 - b. Obscene or profane language “the natural consequence of which is to abuse the hearer or reader.” § 806(2)
 - c. Repeated or Continuous Calls. § 806(5)
 - (1) “repeated”: made with excessive frequency under the circumstances
 - (2) “continuous”: series of calls, one right after the other
 - d. Anonymous Calls. § 806(6)
 - (1) Must disclose employer’s identity when call consumer
 - (2) Aliases are OK
- 3. Deceptive and Misleading Collection Methods Are Prohibited. § 807
 - a. Misrepresenting that affiliated with U.S. or any state. § 807(1)
 - (1) e.g., eagle or scales of justice
 - b. Misrepresenting the character, amount or legal status of any debt. § 807(2)
 - (1) e.g., falsely stating that debt is immediately due
 - c. Misrepresenting that a call or letter is from an attorney. § 807(3)
 - (1) Note: Creditor who falsely uses attorney’s name becomes a debt collector and violates this section.
 - d. Misrepresenting that nonpayment will result in arrest or imprisonment or the seizure, garnishment, attachment or sale of any property. § 807(4)
 - e. Threatening to take any action that cannot be taken legally or that is not intended to be taken. § 807(5)
 - f. Misrepresenting that consumer committed a crime or other conduct in order to disgrace the consumer. § 807(7)
 - (1) e.g., saying that consumer committed a crime by issuing a check that is dishonored, when state law says there must be a “scheme to defraud”
 - g. Communicating or threatening to communicate false credit information to anyone. § 807(8)
 - (1) If collector knows it’s disputed, must report that it’s disputed
 - h. Failing to give the “mini-Miranda warning.” § 807(11)
 - (1) Disclose in the initial contact with consumer (whether oral or written) that debt collector is attempting to collect a debt and that any information obtained will be used for that purpose
 - (a) Before 1996 amendment, this section required this disclosure in all

communications made to collect a debt

- (2) Additional change: All subsequent communications must disclose that communication is from debt collector
 - (a) Don't have to disclose this on formal pleadings made in connection with a legal action. § 807(12)

- i. Using a business name other than the company's true name. § 807(14)
 - (1) Note: Creditor violates this if it uses name that falsely implies that a third party is involved

B. Debt Collector Contacts with Third Parties

- 1. Generally: May not discuss or otherwise communicate with a third party about an alleged debt.
 - a. "Third party" doesn't include consumers' attorney, credit bureaus if otherwise permitted by law, the creditor, the creditor's attorney, or the debt collector's attorney
 - b. "Consumer" includes spouse, parent (if a minor), guardian, executor, or administrator
 - c. Exceptions to prohibition against discussing or communicating about a debt
 - (1) Prior consent of consumer given directly to the collector
 - (2) Express permission of court of competent jurisdiction.
 - (3) Reasonably necessary to effectuate a postjudgment judicial remedy.
- 2. Location Information. § 804
 - a. Collectors may contact 3rd parties to obtain location information about consumers
 - (1) "location information" means a consumer's address, home telephone number, and place of employment
 - (2) Does not include work phone numbers, names of supervisors and their telephone numbers, salaries, or dates of paydays.
 - b. May not call third parties if already have information
 - (1) i.e., can't use this provision to put pressure on consumer by harassing family, friends and co-workers.

III. Unfair Debt Collection Practices § 808

- A. Collection of any amount (such as interest or a collection fee) that isn't either expressly authorized by the agreement creating the debt or permitted by state law. § 808(1)
 - 1. May not collect a fee if contract doesn't provide for such a fee and state law is silent
- B. Unfair use of post-dated checks. § 808(2)-(4)
 - 1. Demanding that consumers provide such checks is OK
 - 2. May not deposit post-dated checks before their due dates
- C. Suing in improper venue. § 811
 - 1. May sue only in judicial district where consumer resides or where the consumer signed the contract being sued upon
 - a. If agreement was oral, may sue only where consumer resides.

- b. If judgment is obtained in forum that satisfies this section, it may be enforced in another jurisdiction because consumer had the opportunity to defend the original action in a convenient forum.

IV. Disclosures

- A. “Mini-Miranda warning.” § 807(11) (discussed above)
- B. Validation and Dispute Rights. § 809(a)
 - 1. 809 Notice:
 - a. Within 5 days of first communication with consumer
 - b. Written notice unless provided orally in first communication
 - c. Amount of the debt
 - d. Name of creditor
 - e. Statement that collector will:
 - (1) assume validity unless disputes in writing within 30 days
 - (2) send verification or copy of judgment if disputes in writing within 30 days
 - (3) identify original creditor, if different from current creditor, if consumer requests within the 30 days
 - 2. Only have to provide the disclosure once
 - 3. Statute doesn't impose requirements about form of disclosure, but illegible notice does not comply.
 - a. Commission's Annual Report: Require “clear and conspicuous” disclosure
 - 4. If consumer disputes in writing, collector must cease collection efforts until verifies the debt and mails a response
 - 5. Collection activity during the 30-day period
 - a. Some have suggested that it's a “grace period,” so no collection activity, even if consumer hasn't sent written dispute
 - b. Commission's Annual Report: Law doesn't say this, so clarify by expressly permitting collection activity during 30-day period if collector has not received a written dispute

V. Self Help

- A. Disputing the Debt; Verification. § 809(b) (Discussed above)
- B. Cease Communication. § 805(c)
 - 1. “Shut-up notice”
 - 2. Collector may communicate once more
 - 3. Doesn't prevent collector or creditor from suing or reporting to credit bureaus

VI. Enforcement

- A. Administrative. § 814
 - 1. Enforced by Federal Trade Commission unless specifically assigned to another agency (e.g., Comptroller of the Currency, Federal Reserve Board, and FDIC)
 - 2. No trade regulation rules or regulations
- B. Private Suits. § 813
 - 1. Federal district court or any other court of competent jurisdiction
 - 2. Within one year from date of violation
 - 3. Damages
 - a. Actual damages
 - b. Other damages:

- (1) Individual: up to \$1,000 additional damages
- (2) Class action: the lesser of \$500,000 or 1% of the collector's net worth

- 4. If successful, court costs and attorney's fees
- 5. Collector not liable if shows that violation was not intentional and resulted from bona fide error despite reasonable procedures to avoid the error