

# **Frequently Asked Questions**

## **1. What is the difference between a professional collection service and a creditor collecting on its own behalf?**

Sometimes consumers confuse third-party collectors with the in-house collection department of a creditor. Professional debt collection services are third-parties to the transaction that created the debt and are collecting for the creditor. The collection practices of third-party collectors are directly regulated by the Fair Debt Collection Practices Act administered by the Federal Trade Commission, but creditors' collection practices are governed by law only under certain conditions.

## **2. What should I do if contacted by a collection agency?**

It is important to respond as soon as possible. If you don't the collection agency will keep trying to contact you to collect what they believe is a valid debt. If you legally owe the debt you should make payment arrangements.

## **3. Must the debt collector identify him or herself and inform me of the nature of the communication?**

Yes. In Texas, when speaking to a debtor, debt collectors must identify themselves, using his or her true name, or maintain a list of all business or professional names used or formerly used in collecting debts. The debt collector must also inform you that the purpose of the communication is to collect a debt.

## **4. How do I find out what the bill is for?**

Either in the first contact with you regarding the debt or in writing within five days after the initial contact, the collection agency must provide the following information:

- The amount owed
- The name of the creditor, and
- The process to follow to dispute the bill or receive verification of the debt.

## **5. What if I dispute the accuracy of the bill? What can I do?**

You should send the collection agency a written notice that you dispute the bill. The collection agency must stop all communications with you upon receiving your written notice, but may resume contact with you if he/she obtains and sends verification of the debt to you.

## **6. Why can't I continue making payments to the original creditor to whom I owe money?**

The original creditor contracts with the collection agency to collect the debt. Once the debt has been placed with a collection agency, the collection agency is entitled to receive all payments on the account.

### **7. What if the bill was paid or I don't owe the debt?**

If you do not owe the bill, or if the bill has already been paid, send the agency a written dispute along with copies of receipts, cancelled checks and any other information to back up your claim. It is important to send your letter and documents within 30 days after your first contact from the collection agency. Once the agency receives your dispute letter, it must stop further attempts to collect the debt until it sends you a written verification to show that you do owe the bill and that the amount of the debt is correct. If you are questioning only a part of the debt, the agency may not continue to collect on that part until it has provided verification, but you should make arrangements to pay the non-disputed portion of the debt.

### **8. What if I'm not the person the collection agency is looking for?**

If you are not the person the agency is looking for, write and explain the mistake. If you are called, inform the collector you are not the person on the account. You may be asked to provide a driver's license or social security number or complete an affidavit to prove that you are not the right person. If you are unsure about your legal responsibility for a debt, consult with an attorney.

### **9. Will I have to pay extra because the debt is with a collection agency?**

In Texas, a collection agency cannot attempt to collect more than the amount owed unless fees are allowed by statute or other charges are authorized by the agreement creating the debt and permitted by law. You should review the agreement you have with the creditor to determine if interest charges, late fees or attorney fees are included in the agreement.

### **10. If the debt is from a dishonored check, will there be a service charge?**

In Texas, the holder of a dishonored check or the third-party debt collector collecting the face value of the check may also collect a reasonable fee, not to exceed \$25 and applicable sales tax on the fee. Failure to pay the fee can result in lost check-cashing privileges with creditors.

### **11. Can I be sued if I fail to pay the debt?**

Yes. A civil lawsuit can be filed against you in the county where you reside. If a judgment is obtained, you may also be liable for court cost and attorney fees.

### **12. Can I go to jail for non-payment of a debt?**

No. You will not be arrested or placed in jail for non-payment of a debt. However, in Texas, following proper court proceedings, criminal penalties can be imposed for writing a check in exchange for goods or services if the check is returned for insufficient funds.

### **13. Can my home be foreclosed on or my wages garnished to pay a debt?**

In Texas, generally a registered homestead is protected and cannot be foreclosed upon to pay a debt. However, if you default on a first or second mortgage or a home equity loan, the lender can foreclose on your home. You should consult an attorney to be certain if your home or homestead is in jeopardy. Wages are generally protected, but can be garnished to pay court-ordered child support, spousal maintenance, student loans in default and back taxes. Bank accounts, savings accounts and other general investment accounts or brokerage accounts may be garnished.

### **14. When can a collection agency call me?**

A collection agency may presume that it is convenient to call you between 8 a.m. and 9 p.m., local time at your location. If these times are inconvenient, you should ask the agency to contact you at other times. There is no law that specifically limits the number of calls an agency may make to you, but repeated calls over a short period, which may be annoying or harassing, are prohibited.

### **15. Can a collection agency contact other people and discuss my bill?**

Although a collector may contact others to try and locate you, he or she may not discuss your account or debt status with anyone else but you or your spouse. He or she must give his or her name, but not the name of the agency unless they are specifically asked for it.

### **16. Can a collection agency contact my employer?**

A collection agency may contact your employer, but only for the following reasons: a. To verify your employment b. To verify your business location c. To determine if you have medical insurance to cover a medical bill.

### **17. Can a collection agency call me at work?**

Yes, unless the debt collector knows or has reason to know that your employer prohibits you from receiving such communication and he or she does not have any other address or telephone number to contact you. If you are prohibited from being contacted at work, inform the debt collector in writing, including an address and telephone number where you may be contacted to discuss the account.

### **18. How can I stop a collection agency from contacting me?**

If you want to stop all contact from the collection agency you may request in writing that they do not contact that they not contact you again. Your letter should be sent by certified mail, "return receipt requested" so you have proof of delivery. Once the agency receives your letter, its collectors can only contact you one final time to explain what action they plan to seek. After that, contact must stop. Remember that if you request no further contact in any way, you may leave the agency with no choice but to file a civil lawsuit against you.

**19. Must an agency accept partial payments?**

No. A collection agency has the choice of demanding the whole amount due or taking payments on the bill. The agency will want to know your actual ability to pay the debt. The agency can establish an amount it is willing to accept and the payment schedule.

**20. As long as I am paying something every month, doesn't the collection agency have to take my payments?**

No. The agency's responsibility is to collect the debts assigned to it. The agency will want to have payments made in accordance with an agreed plan so it knows when to expect payment and when the debt is paid in full.

**21. The collection agency has agreed to take payments. Do I have to sign a contract?**

You don't have to sign any contract with a collection agency. However, if the agency wants the payment agreement to be in writing, they have the right to require you to sign an agreement as a condition of accepting payments. This can be a protection for both of you as long as you meet the payment amount and schedule of the agreement. The agreement or contract may also be in the form of a promissory note. Both are legal documents by which you are bound - do not promise more than you can pay and don't sign one just to appease an agency. A contract is a legally enforceable agreement. You should consult an attorney before signing a legal document.

**22. What about oral (unwritten) payment plans?**

Collection agencies may or may not accept unwritten agreements and such agreements do not have the same legal enforcement status as a written contract.

**23. The collection agency wants me to write postdated checks. Do I have to do this?**

You are not required to give postdated checks to a collection agency. However, the agency may request postdated checks as a method of structuring the repayment plan. Writing or accepting such checks is not illegal so long as you plan to cover them when they are cashed. If a check is dated more than five days in advance, the agency must notify you in writing at least three business days prior to the deposit of the postdated check.

**24. What if I can't keep the payment arrangements I agreed to?**

If possible, contact the agency before you miss a payment or send a partial payment and explain the problem and what you plan to do to solve it and catch up on your payments. Many agencies will work with you, especially if you have already made several payments on time.

**25. What happens to my credit report when I don't pay a debt?**

If the debt goes unpaid, a report may be sent to one or all of the three major credit reporting agencies, to remain on your credit report for seven years from the date of original delinquency. If

at a later date the debt is paid, partial or in full, your credit report will be updated to reflect the payment, but the original "charge off" will stay on the credit report for the balance of the seven years. The burden of proof of a consumer's dispute to an entry on a credit report lies with the consumer who must provide evidence to the credit reporting agencies that the debt was paid or not owed.

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