



Topic for the Month:

Debt Collection

- Mark A. Bartels
 - Philip J. Danen
 - Marc A. Hammer
 - Timothy A. Hawley
 - Steven D. Hitzeman
 - Sandra L. Hupfer
 - Robert J. Janssen
 - Michael J. Kirschling
 - Evan Y. Lin
 - Jackson T. Main, Jr.
 - Lora A. Matzke
 - Peggy L. Miller
 - Christina L. Peterson
 - Patricia J. Sandoz
 - C. David Stellpflug
-
- 444 Reid St., Suite 200
De Pere, WI 54115
920-336-5766
920-336-5769 (fax)
866-525-5200 (toll-free)

info@wislawyers.com

www.wislawyers.com

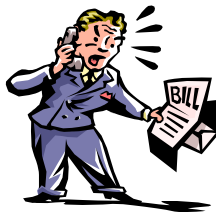
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Can a Debt Collector Inform a Third-Party about the Debt You Owe? The general answer to this question is no. Both the federal government and Wisconsin have enacted legislation to eliminate abusive debt collection practices. Under the federal law known as the Fair Debt Collection Practices Act (“FDCPA”), a “debt collector” has been broadly construed to cover any third party collector. To provide additional rights for consumers, the Wisconsin Consumer Act defines a debt collector as “any person engaging, directly or indirectly, in debt collection.” Jointly, these laws are designed to provide protection for consumers.

How can a Debt Collector Legally Obtain Information About a Debtor?

Obtaining location information: When attempting to locate a debtor with a third party’s help, the debt collector cannot state that the consumer owes any debt. In addition, the debt collector cannot send any communication by means of a post card or use any language or symbol on an envelope that indicates the communication relates to the collection of a debt.

Third party communication in connection with a debt: As a general rule, debt collectors cannot communicate a consumer’s debt to a third party. The debt collector is only permitted to communicate a debt to the following people: the consumer, the consumer’s attorney, a consumer reporting agency, a creditor, the creditor’s attorney, or the debt collector’s attorney. There are three limited exceptions to this rule, namely, when the consumer has given prior permission directly to the debt collector; where the debt collector has the court’s express permission; or where the communication is reasonably necessary to effectuate a post judgment judicial remedy. The most common violation of communicating a debt to third parties is when a store publicly posts a list of all debtors who issued a worthless check.



Communications with the Consumer: In general, the debt collector may not communicate with the consumer at any time or place known to be inconvenient to the consumer. It is assumed that the convenient time for such communication is between 8:00 a.m. and 9:00 p.m. at the consumer’s location. In addition, the debt collector may not communicate with the consumer at his/her place of business if the debt collector has reason to know that the consumer’s employer prohibits such communication. Finally, if the debt collector knows

that the consumer is represented by counsel with respect to a debt and can readily ascertain the attorney’s name and address, the debt collector must communicate only with that attorney.

Conduct permitted or restricted: Debt collectors also are restricted in the manner they conduct their collection efforts. First, debt collectors may not engage in any conduct that has the natural consequence of harassing, oppressing or abusing any person in connection with the collection of a debt. Harassment or abuse includes the following: use of threat, violence or criminal means to harm the physical person, his reputation, or his property; use of obscene and profane language; or placing telephone calls without meaningful disclosure of the caller’s identity.

Debt collectors may not use any fraudulent, deceptive or misleading representation or means in connection with the collection of any debt. There are numerous types of prohibitive conduct, which fall within this category. A sampling of this type of conduct is: false representation of the character, amount or legal status of any debt; attempting to collect a debt that has been discharged in bankruptcy; or falsely representing or implying that a consumer committed any crime.

What Damages Are Permitted? A FDCPA violation can render a debt collector liable for various types and amounts of relief, including actual damages, statutory damages and attorney fees. Actual damages include amounts improperly collected, lost wages, physical injuries, emotional distress and accountant fees. The federal statute also permits statutory damages may be awarded up to \$1,000. In addition, reasonable attorney fees as determined by the court are permissible to any person successful in enforcing liability against a debt collector.

Wisconsin law provides for a penalty that is double the amount of the finance charge in connection with any the transaction. The penalty cannot be less than \$100 or more than a \$1,000.



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