

**LAWDESK**

**FAIR DEBT COLLECTION PRACTICES  
ACT**

**TRAINING**

## Fair Debt Collection Practices Act Training

### DEFINITIONS

As used in this subchapter:

- The term “**Commission**” means the Federal Trade Commission.
- The term “**communication**” means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- The term “**consumer**” means any natural person obligated or allegedly obligated to pay any debt.
- The term “**creditor**” means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.
- The term “**debt**” means 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.
- The term “**debt collector**” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly **or** indirectly, debts owed or due or asserted to be owed or due another.

Notwithstanding the exclusion provided in this definition below, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of the “Unfair Practices” section hereafter, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests.

The term does not include:

- any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
- any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
- any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by

receiving payments from such consumers and distributing such amounts to creditors;  
and

- any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity:
  - is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
  - concerns a debt which was originated by such person;
  - concerns a debt which was not in default at the time it was obtained by such person;  
or
  - concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.
- The term “**location information**” means a consumer’s place of abode and his telephone number at such place, or his place of employment.
- The term “**State**” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

#### **ACQUISITION OF LOCATION INFORMATION**

Company or the debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

- identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;
- not state that such consumer owes any debt;
- not communicate with any such person more than once unless requested to do so by such person or unless Company or the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;
- not communicate by post card;
- not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that Company or the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and
- after the Company or the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney’s name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from Company or the debt collector.

#### **COMMUNICATION IN CONNECTION WITH DEBT COLLECTION**

**(a) Communication with the consumer generally** - Without the prior consent of the consumer given directly to Company or the debt collector or the express permission of a court of

competent jurisdiction, Company or the debt collector may not communicate with a consumer in connection with the collection of any debt:

- at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, Company or the debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;
- if Company or the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from Company or the debt collector, or unless the attorney consents to direct communication with the consumer; or
- at the consumer's place of employment if Company or the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

**(b) Communication with third parties** - Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to Company or the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, Company or the debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

**(c) Ceasing communication** - If a consumer notifies Company or the debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes Company or the debt collector to cease further communication with the consumer, Company or the debt collector shall not communicate further with the consumer with respect to such debt, except:

- to advise the consumer that Company or the debt collector's further efforts are being terminated;
- to notify the consumer that Company or the debt collector may invoke specified remedies which are ordinarily invoked by Company or the debt collector; or
- where applicable, to notify the consumer that Company or the debt collector intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

**(d) "Consumer" defined** - For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

### **HARASSMENT OR ABUSE**

Company or the debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

- The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.
- The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a (f) or 1681b (3) [1] of this title.
- The advertisement for sale of any debt to coerce payment of the debt.
- Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- Except as provided in the Acquisition of Location Information section above, the placement of telephone calls without meaningful disclosure of the caller's identity

### **FALSE OR MISLEADING REPRESENTATIONS**

Company or the debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- The false representation or implication that Company or the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.
- The false representation of:
  - the character, amount, or legal status of any debt; or
  - any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.
- The false representation or implication that any individual is an attorney or that any communication is from an attorney.
- The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and Company or the debt collector intends to take such action.
- The threat to take any action that cannot legally be taken or that is not intended to be taken.
- The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:
  - lose any claim or defense to payment of the debt; or
  - become subject to any practice prohibited by this subchapter.
- The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
- Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

- The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
- The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.
- The false representation or implication that accounts have been turned over to innocent purchasers for value.
- The false representation or implication that documents are legal process.
- The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- The false representation or implication that Company or the debt collector operates or is employed by a consumer reporting agency as defined by section 1681a (f) of this title.

### **UNFAIR PRACTICES**

Company or the debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- The acceptance by Company or the debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of Company or the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.
- The solicitation by Company or the debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.
- Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

- Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:
  - there is no present right to possession of the property claimed as collateral through an enforceable security interest;
  - there is no present intention to take possession of the property; or
  - the property is exempt by law from such dispossession or disablement.
- Communicating with a consumer regarding a debt by post card.
- Using any language or symbol, other than Company or the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that Company or the debt collector may use the business name if such name does not indicate that it is in the debt collection business.

### **NOTICE OF DEBT**

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing:

- the amount of the debt;
- the name of the Company (to whom the debt is owed);
- a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

These above notices are not applicable to Company when collecting the debt in its own name because it is the original creditor. However, the notices are applicable to its debt collection vendor(s).

### **DISPUTED DEBTS**

If the consumer notifies Company or the debt collector in writing within the thirty-day period described above that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by Company or the debt collector.

### **MULTIPLE DEBTS**

If any consumer owes multiple debts and makes any single payment to Company or the debt collector with respect to such debts, Company or the debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

## **LEGAL ACTIONS**

### **Venue**

Company or the debt collector who brings any legal action on a debt against any consumer shall:

- bring such action only in the judicial district or similar legal entity:
  - in which such consumer signed the contract sued upon; or
  - in which such consumer resides at the commencement of the action.

## **FURNISHING CERTAIN DECEPTIVE FORMS**

- It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than Company is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes Company, when in fact such person is not so participating.
- Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

## **RELATION TO STATE LAWS**

The FDCPA does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the FDCPA, and then only to the extent of the inconsistency. For purposes of the FDCPA, a State law is not inconsistent if the protection such law affords any consumer is greater than the protection provided by the FDCPA.