

DEBT COLLECTION

Your rights when dealing with collection agencies

WHAT CAN A CREDITOR DO TO ME IF I FALL BEHIND ON A DEBT?

If you fall behind on your payments on your credit cards, loans, or other purchases, your creditor can:

- Contact you in writing, by phone, or otherwise demand payment, accept partial payment, renegotiate the terms of your payments, or threaten legal action.
- Turn your account over to a collection agency.
- Repossess the goods that you are financing (making payments), or other goods in your possession that you have pledged as collateral, if the creditor has a “security interest” in the goods.
- Bring a lawsuit against you seeking the amount owed plus the cost of the suit, usually including attorney’s fees.

WHAT ARE MY RIGHTS IF I AM CONTACTED BY A COLLECTION AGENCY?

If you are contacted by collection agencies and/or persons collecting on behalf of the creditor, the federal Fair Debt Collection Practices Act (FDCPA, 15 U.S.C. § 1692) provides you with several rights. The FDCPA does not apply when the creditor is collecting on its own behalf.

Your rights under the FDCPA include:

- Your right to advise the collection agency that the debt is in dispute and request verification of the debt. You must make your request within thirty days of the date you received notice. All requests should be dated in writing (see the sample below). The collection agency must then obtain verification of the debt and provide you with copies of that verification.
- Your right not to be contacted at any unusual time or place. The law assumes that it is inconvenient to be called before 8 a.m. or after 9:00 p.m.
- Your right to have the collection agency stop all communication with you. The agency can, however, notify you as to the status of your account (i.e., that the collection efforts are being terminated or what other actions the collection agency intends to take).
- Your right to stop all communication at your place of employment if your employer prohibits contact from a collection agency at your job.

Your right to be free from other forms of harassment.

For example, a collection agency cannot:

- Send you postcards or use envelopes that identify it as a collection agency.
- Send or threaten to send false credit information to others.
- Talk to or send letters to other people about you or your debt. (There are some exceptions.)
- Use obscene or profane language.
- Advertise your debts to anyone.
- Repeatedly phone you for the purpose of annoying you.
- Harass your employer.
- Make false statements about the debt or use deceptive means to collect the debt or to obtain information about you.
- Accept or request checks postdated by more than five days, or deposit or threaten to deposit postdated checks early.
- Make false or misleading statements suggesting the collector is an attorney, operating a consumer agency, working with the government, or someone other than the agency trying to collect the debt.
- Suggest that non-legal documents are formal legal papers, or suggest that formal legal papers are non-legal.
- Suggest that you committed a crime.
- Suggest that nonpayment will result in arrest, imprisonment, or other action, unless the debt collector actually intends to take such action

SAMPLE LETTER TO DEBT COLLECTOR

(Date)

Name (of Collector)

Address (of Collector)

Re: (Generally you would put your account number)

Dear (Name of Collector):

In regard to the above referenced matter, with this letter I request the following:

(Select which of the following items apply to you, and include those items in your letter.)

- That you cease communication with the exception of notification as to the status of my account, i.e., that the collection efforts are being terminated or what other action you intend to take.
- That you cease all communication with me at my place of employment.
- That if it is necessary to communicate with me by telephone at home, call after 8 a.m. and before 9 p.m.
- That you cease third-party communication, i.e., communication with anyone other than me or my attorney.
- I am represented by an attorney. Please direct all future communication to him/her at (include your attorney's phone number).
- I am disputing all or part of this debt. Please provide me with written verification of the debt. This should include the name and address of the creditor, all contracts, correspondence, billings, notices, etc.

Sincerely,
(Your Name)

WHAT ARE MY RIGHTS IF REPOSSESSION OF MY PROPERTY IS THREATENED?

You do not have to consent to the repossession. A creditor can repossess a car or other property (like furniture) that you are buying on installments when you are behind on your payments without a court order, but cannot breach the peace. NRS 104.9609.

By refusing to consent to the repossession, you force the creditor to sue you. This could expose you to additional court costs and attorney's fees.

You might be able to negotiate a voluntary repossession where the creditor agrees that in exchange for surrender of the car, it will not sue you for more money (a "deficiency"). However, the creditor is not obligated to waive the right to sue you for a deficiency balance.

Following repossession, you have the right to get the car back by paying off the full amount due, plus reasonable repossession costs (i.e., towing and storage charges). NRS 104.9623. If you do not get the car back, the creditor can proceed with the sale.

If a creditor has repossessed your car, the creditor must give you written notice of your right to redemption and notice of intent to sell the vehicle within sixty days after repossession. NRS 104.9614 sets out specific requirements of a notice of sale of a repossessed vehicle. You may consult with an attorney to determine whether the notice you receive meets those requirements, and what your rights are in the event it does not.

After resale, the creditor might attempt to collect a “deficiency balance” from you. This “balance” is the difference between the outstanding debt at the time of resale and the amount the property was sold. However, in order to collect a deficiency, the sale must be “reasonable.” If you did not receive written notice of the sale or it does not appear that the sale was reasonable, you should consult an attorney.

WHAT IF I AM SUED?

A creditor may sue you in court for the debt involved, including all court costs and attorney’s fees it incurs. If sued, you should receive a written complaint that will either demand you answer in writing within 20 days of the date of service or tell you to be in court at a specified place and time. If you do not file a written answer with the court or appear in court, a creditor may obtain a default judgment against you (for your failure to appear).

If you are sued, you may contact an attorney to see if you have a “defense” (a legal excuse not to pay). If you do not have a defense, a payment plan may often be arranged, or you may be “judgment proof” (i.e., you do not own any property that may be attached or wages that may be garnished). Obtain the pamphlet entitled What it Means to be Collection Proof.

If you cannot afford an attorney, contact your local legal services program.

Once a judgment is entered against you, a creditor can seek to obtain a garnishment of your wages or an execution on your property. A judgment remains in effect in Nevada for six years. You might be able to protect yourself against garnishment or execution. Obtain the pamphlet entitled Attachment & Garnishment.



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