



ATTORNEYS AT LAW

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IF YOU DO NOT FILE A BANKRUPTCY

The information in this hand out may help you if you have unsecured debt you cannot pay but cannot file a bankruptcy. You will need to minimize the harassing phone calls, and you can consider settling with creditors.

Harassing Telephone Calls; Fair Debt Collection Practices Act

The most effective way to stop harassing telephone calls from creditors is to file bankruptcy. If it is not feasible for you to file bankruptcy at this time, you may use the Fair Debt Collection Practices Act to stop, or at least reduce, harassing telephone calls from bill collectors. The act applies only to bill collectors, not the original creditor. Attached is a copy of a form letter that you can send to bill collectors.

You should send this letter certified, return receipt requested. Keep a copy of the letter and keep the green card that shows the bill collector received the letter through certified mail. If the bill collector continues to call you after they receive this letter, you may record the telephone conversation. I have attached a letter explaining how to record telephone conversations.

You cannot expect to win a lot of money under the Fair Debt Collection Practices Act; the damages are usually not over \$1,000.00. The purpose is to stop the calls, not make money. If you pay the filing fee, I will represent you on a contingency fee basis, and we will file suit against the bill collector for violation of the Fair Debt Collection Practices Act. However, you must provide me with solid evidence in order for me to take the case on a contingency basis. That means that we must have a copy of the letter and the green card showing that they received the notice required by the Fair Debt Collection Practices Act. Likewise, you must provide me with a phone recording, letter or some other solid evidence that the bill collector has violated the Fair Debt Collection Practices Act.

Using the Fair Debt Collection Practices Act can be cumbersome. You have to deal with the bill collectors one by one, and it is a hassle keeping track of letters and green cards, as well as recording your phone conversations. It is not easy, but it may your most effective means of controlling harassing telephone calls if it is not possible for you to file a bankruptcy.

I also suggest you buy a copy of the book *Know Your Rights* by Professor Richard Alderman. This is a good book for non-lawyers to learn about their legal rights in Texas. The book answers questions about the Fair Debt Collection Practices Act.

Payment or Settlement

Limitations bars collection of a debt four years after the last payment. The creditor cannot sue you after four years, and the creditor violates the Fair Debt Collection Practices Act by demanding payment after limitations bars collection. You only need to pay or settle debts that are not barred by limitations.

There is one simple rule for settling with creditors on delinquent debt: do not send creditors or bill collectors any money unless you have a written agreement that the payment will completely eliminate the debt.

Whatever you do, do not pay a creditor a little money hoping they will leave you alone. The statute of limitations on debt is four years. That means the bill collector can call you for up to four years before they must either sue you or the debt is barred. Any time you make a payment, the four years starts running again from the date of the payment.

Paying less than the minimum payment or less than the amount of a delinquent debt only makes the bill collectors more aggressive. Paying less than what is owed tells the creditor three things: (1) you are in trouble or you would pay the required amount, (2) you can pay some, so (3) they should call and try to get more money from you. Paying some money to a bill collector is like blood in the water to a shark.

You can agree to settle a debt with the creditor for less than the amount due, but you should have it in writing. If you agree to settle, you should require the creditor to send you a letter agreeing to (1) the settlement amount (2) a complete release of the debt. Do not settle with anyone who will not put it in writing. You can then send a check with a letter accepting the settlement. You can agree to make payments over a period of time, but the best way to settle is for a lump sum. See attached settlement letter.

Also, you should be very careful about settling with a bill collector. Bill collectors may try to “settle” an account even if they do not have the proper authority, and the original creditor will still try to collect the debt. You can be reasonably sure of getting an honest settlement if you send your money to the original creditor or an attorney.

If a creditor gets a judgment against you, you will need legal advice about a special release to make sure you do not have a problem with your house.

Attachments: Form letter to bill collectors
Information on recording
Form settlement letter

YOUR NAME AND ADDRESS

[DATE]

NAME OF BILL COLLECTOR

Dear Sir or Madam:

The Fair Debt Collection Practices Act provides that, if a consumer notifies a debt collector in writing that the consumer wishes the debt collector to cease further communications with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except (1) to advise the consumer that the debt collector's further efforts are being terminated; (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy. I hereby notify you that I wish you to cease further communications with me. This notice is effective as soon as you receive the certified mail.

Any communication that does not fit within one of the exceptions stated above will be a violation of the Fair Debt Collection Practices Act. In particular, any demand or request for payment does not fit within one of the exceptions. Therefore, you will never again call me on the phone and ask me to pay this debt. Also, **do not call me at work**. You cannot call me at my place of employment if you know that my employer prohibits me from receiving such calls at work. My employer does not allow me to take personal calls.

For reasons that do not concern you, I choose not to file a bankruptcy at this time. Therefore, you may be certain that I will rely on my rights under the Fair Debt Collection Practices Act. If you violate the Act, I will bring suit.

Yours truly,

Recording Telephone Conversations

It is perfectly legal to record your own conversations. Texas law allows conversations to be recorded so long as one party consents to the recording. You can consent, and there is no obligation to tell the other party you are recording. TEX. CIV. PRAC. & REM. CODE § 123.001.

In order to use the tape in court, you need to keep the tape recorder so you can show the judge you know how to use it.

Do not try to "cross-examine" anyone to get admissions. You lose credibility if you try to trick the other party into saying what you want them to say. Likewise, you do not accomplish much if you use an "isn't it true" type of questioning. The tape is not very persuasive if all the other person says is "Yeah, yeah, yeah. That's right." Ask questions that require more than a yes or no answer. Act natural and let the other person talk.

Phone recording devices are available from Radio Shack. They have a Phone Pickup that cost about three dollars and will work with any tape recorder that has a plug for a separate microphone (some small recorders only have built-in microphones). The Cassette Recorder Controller will work with any recorder that has a remote plug and a microphone plug. It is easier to leave hooked up to the phone because the cord does not attach to the handset. These devices do not work on some office phone systems. For those phones, you can buy a Telephone cassette recorder such as the Radio Shack Model 43-273 for around \$100.00.

YOUR NAME AND ADDRESS

[DATE]

NAME OF CREDITOR OR ATTORNEY

Dear _____[Person who sent you written settlement offer]:

_____ [creditor] claims I [we] owe a debt in the approximate amount of \$_____. I accept your offer to settle this alleged debt. We have agreed to settle the debt for a payment of \$_____. In return for that payment, _____ [creditor] agrees to completely release any and all claims it may have against me [or us].

In addition, the attached check is tendered in full satisfaction of the debt in accordance with Texas Business and Commerce Code § 3.311.

Yours truly,
