



# Debt Collection Basics

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***This presentation is not meant to serve as a substitute for reading the various laws discussed, seeking legal counsel or otherwise requesting Department guidance and/or interpretations on the laws it administers and enforces. The presentation merely serves as an introduction and overview.***

# Roadmap

- SCDCA Intro
- State and Federal Debt Collection laws
- Recent Changes to the FDCPA
- Other Debt Collection Issues



# How Can SCDCA Help You?



**File a Complaint**



**Background  
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## Protecting Consumers from Inequities in the Marketplace

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# What is debt collection?

- Process of pursuing payments of debts owed by individuals.
- Carried out by organizations that specialize in collecting debt (Collection Agencies).
- Act as agents of creditors collecting the debt for an arranged fee or percentage of debt collected.



# Who is a debt collector?

- Original Creditors\*
- Third-party debt collectors
- Attorneys
- Debt buyers





# How Debts are Collected

- Contact with debtor – phone calls, letters, emails
- Credit Reporting
- Debt Settlement
- Litigation
- Other methods
  - Repossession
  - Garnishment

# Debt Collectors Must Follow the Rules

- State debt collection laws
- Fair Debt Collection Practices Act
- Telephone Consumer Protection Act
- Fair Credit Reporting Act



# South Carolina Unconscionable Debt Collection Practices Act: § 37-5-108

- Part of the *South Carolina Consumer Protection Code*
- Applies to all Creditors, including:
  - Original Creditor
  - Third Party Debt Collectors, agents, etc.
  - Repossession Agents
- Provides consumer protections against unfair methods of debt collection



# Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692

- Also provides protection against unfair methods of debt collection
- Broader prohibitions than SC law
- Applies only to debt collectors hired by the creditor, creditors who use a different business name when collecting debts owed to them (“creditor incognito”), and attorneys who collect debts on a regular basis





# Communication With Debtors



- Communications include phone calls, mail, email and text
- Contact allowed between 8am and 9pm
  - Cannot call repetitively in a 24-hour period
  - FDCPA: Cannot contact at times *known* to be inconvenient
- CANNOT contact someone known to be represented by an attorney

# FDCPA's 7/7 Rule

- Debt collector cannot call a consumer:
  - More than 7 times within 7 consecutive days, OR
  - Within a period of 7 consecutive days after having a telephone discussion with debtor in connection with the debt.
- Applies to EACH DEBT
- Exclusions
  - Calls where debtor has given prior consent
  - Calls that don't connect to the dialed number
  - Calls placed to specific professionals (i.e., debtor's attorney)

# Communications with Third Parties

- Generally, debt collectors CANNOT communicate with third-parties regarding a debt
- Exception: Can communicate with third parties for location information purposes
  - Home address
  - Work address
  - Phone number
- CANNOT indicate consumer owes a debt



# Harassment

- Debt collectors may not harass, oppress, or abuse you or third parties they contact
- They may not
  - Use threats of violence or harm
  - Use obscene or profane language
  - Repeatedly use the telephone to annoy someone
  - Publish a list of consumers who refuse to pay their debts



# False Statements

- Debt collectors may not
  - Falsely state or imply that they are attorneys, government representatives, or credit bureau employees
  - Misrepresent the amount of your debt
  - Indicate that papers being sent to you are legal forms when they are not
  - Indicate that papers being sent to you are not legal forms when they are

# False Statements

- Debt collectors may not:
  - Falsely state or imply that you have committed a crime
  - State that you will be arrested if you do not pay your debt
- Threaten to seize, garnish, attach, or sell property or wages, or initiate litigation UNLESS:
  - They have the legal right to do so
  - They intend to do so

# Prohibited Unfair Practices

- Collecting any amount greater than your debt, unless state law permits such a charge
- Depositing a post-dated check prematurely
- Contacting debtor by postcard

# Stopping Contact at Work



- Debtor (or their employer) must send a written request to cease contact
  - **Tip: Keep a copy for yourself and send the request certified mail, return receipt requested**
- Creditor must then stop contact
  - Exception: To verify employment, limited contact may be allowed



# Stopping Contact at Home

- Important: FDCPA protection only – only applies to 3<sup>rd</sup> party debt collectors, not original creditors
- Written request sent to debt collector to cease all contact
  - Debtor can consent to limited contact (i.e., mail only)
- Debt Collector then cannot contact EXCEPT to inform debtor that specific action will be taken (i.e., lawsuit)



# FDCPA Validation/Dispute Process

- Notice: in 1<sup>st</sup> communication or within 5 days, contact must contain:
  - Amount of the debt
  - Name of current creditor
  - Name of original creditor
  - Disclosures
    - Debtor has 30 days to dispute the debt or it's assumed valid
    - Explanation of validation process
    - That sender is a debt collector attempting to collect a debt
- Debtor may dispute debt in writing
  - Collection attempts must stop while creditor seeks verification

# New Changes to FDCPA

- Validation must contain one of the following “itemization dates”:
  - Last statement date
  - Charge-off date
  - Last payment date
  - Transaction date
  - Judgment date
- Itemization of current amount of the debt reflecting interest, fees, payments, and credits

# Confirm That The Debt is Yours

- Get debt collector's information
- Do not give additional personal information
- Do not discuss the debt without "validation notice"
- Dispute the debt in writing – send certified mail



# **Other SC Debt Collection Laws**

# Default

- Two types of default in a consumer credit transaction
  1. Putting the collateral at risk
    - Ex.: Failing to maintain auto insurance on a financed vehicle
  2. Failure to make payments
    - Default occurs if a payment is not made within 10 days of due date
    - Creditor has the right to file suit or repossess collateral\*

# Consumer's Right to Cure Default

- Once a payment is in default, and before repossession is initiated, creditor must send the consumer a Right to Cure letter
  - Sent after 10 days in default (12<sup>th</sup> day)
  - Gives consumer 20 days to pay or “cure” the default
  - Effect as if default never occurred if payment is made





# Common Right to Cure Issues

- How many Right to Cure Letters must be sent?
  - Closed ended account (i.e., auto) – 1
  - Open ended account (i.e., credit card) – 1 every 12 months
- Where does a Right to Cure need to be sent?
  - Consumer's last address on file
  - Important that consumers update creditors with any address changes

# Repossession: 3 Legal Means

## 1. Voluntary Repossession

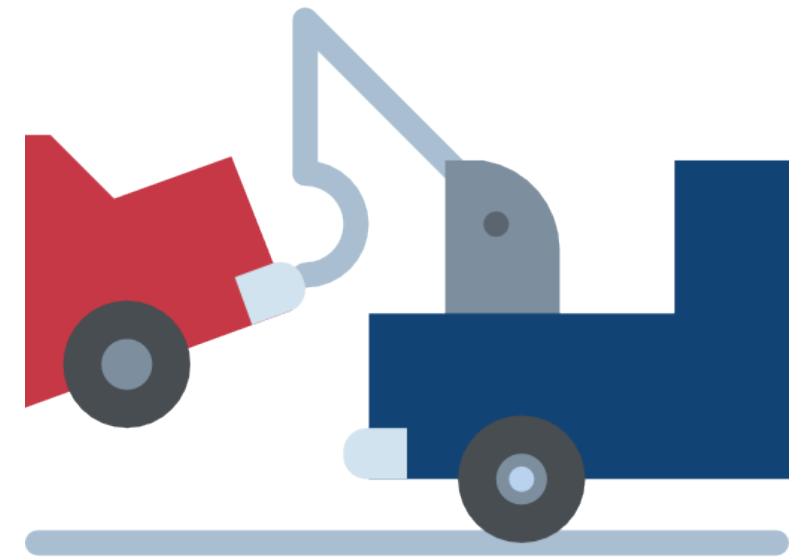
- Consumer willingly returns the collateral back to the creditor
- Notice of Right to Cure does not have to be given when a consumer voluntarily surrenders collateral
- The repossession is NOT voluntary if the creditor uses force or deception to take possession of the collateral.



# Repossession: 3 Legal Means

## 2. Self-Help Repossession

- The creditor may go pick up the collateral or send a repossession agent to pick it up
- The creditor does not need to initiate court proceedings or have consumer's permission to initiate a self-help repossession
- The creditor cannot take any action that may lead to a breach of the peace
  - If the consumer objects, the creditor should leave
  - Any threat or use of force is a breach of the peace
  - A creditor may not enter a person's home without permission



# Repossession: 3 Legal Means

## 3. Claim and Delivery action in court

- Begins with a Summons and Complaint, but also has a demand for immediate possession of the collateral
  - Debtor has a right to hearing before collateral is transferred, but debtor must request it within 5 days after being served the Summons and Complaint
- Consumer has full 30 days to file an Answer
- If the judge rules that the creditor has the right to immediate possession, a court order is entered and law enforcement may take possession of the property even if it's inside the debtor's home



# Consumer's Right to Redeem

- If collateral is ultimately repossessed, creditor must inform consumer of its intent to sell the property
  - Consumer has a “reasonable amount” of time to pay what is owed to purchase collateral outright
  - Creditor may require payment of full amount due – not just late payments
- Consumer may have repossession/storage fees added to amount due
- If money is still owed after sale of the item, creditor may pursue the rest through court action



# Garnishment

- Wage garnishment is prohibited in SC unless:
  - The money is owed to the government
  - The money is owed for child support or alimony
  - A garnishment order is issued and enforced in another state where the consumer was a resident
- Income tax refund garnishment allowed in certain situations
  - Setoff Debt Program – SC Department of Revenue

# Statute of Limitations

- In South Carolina, creditors may bring a court action to recover debts only for a prescribed period of time
  - Contracts (generally): 3 Years for unsecured transactions
  - Mortgages of Real Property: 20 years
  - Judgments: 10 years
- Clock can be restarted in certain situations
- NOTE: Does not mean the debt is no longer owed if SOL has passed, creditors and debt collectors may still attempt to collect debt



# What Can I Do?



- File a complaint with CFPB
  - <https://www.consumerfinance.gov/complaint/>
- File a complaint with SCDCA
  - <https://consumer.sc.gov/consumer-resources/consumer-complaints>
- Consult with a Private Attorney
  - South Carolina Bar Association Lawyer Referral Service: <https://lrs.scbar.org/>

# Resources

- SCDCA Debt Collection Brochure
  - [www.consumer.sc.gov](http://www.consumer.sc.gov)
  - "Consumer Resources"

SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS

## A Guide for Dealing with DEBT COLLECTION

### WHO IS A DEBT COLLECTOR?

In South Carolina a debt collector is any person who regularly collects debts owed to others. **This includes the original creditor, debt buyers, 3rd party debt collectors and attorneys who collect on a regular basis.**

### DID YOU RECEIVE WRITTEN NOTICE?

Within five days of contacting you, the collector must send a written notice outlining what you owe, the name of the creditor you owe, and what to do if you think the debt is not yours.

### WAGE GARNISHMENT

Wage garnishment is prohibited in South Carolina **EXCEPT** if:

1. Money is owed to the government;
2. Money is owed for child support;
3. A garnishment order has been entered in another state while the consumer was a resident there but the consumer later moves to South Carolina.



### DEBT TIMELINE: KNOW WHAT TO EXPECT

If you miss a required payment, a creditor must give you a "Right to Cure" notice before they can demand payment of the balance or repossess the property.

You miss a payment.



After 10 days, the creditor/debt collector can send the right to cure notice.

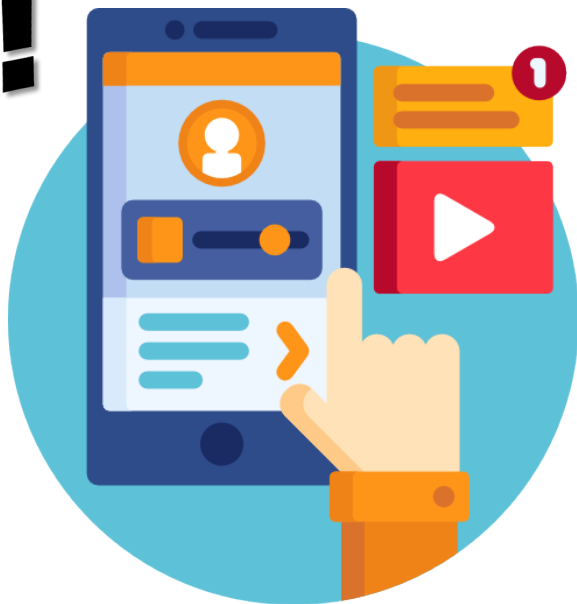


You now have 20 days to catch up on the missed payments and make the loan current.

# QUESTIONS?



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