

# Legal Report

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## Freedman Firm Obtains Monetary Award For Client Victimized By Creditor Harassment

Harassment from a debt collector is not only upsetting, but in certain situations, may even violate a debtor's rights under the Fair Debt Collection Practices Act (FDCPA). Recognizing an upswing in complaints from clients regarding this type of harassment, and that often debtors are unaware of their rights under the law, Jeffrey Freedman Attorneys at Law has renewed its focus on this practice area.

Attorney Brad Davidzik, an associate with the firm, recently secured a settlement for a client who had been harassed by a debt collection firm, in a way that violated her rights under the FDCPA.

"This client received a series of voicemails left on a cell phone, threatening that she would have to appear in Erie County Court the next morning if she did not contact the collection agency and settle the debt that

evening," Davidzik said. "This was blatantly untrue; no court appearance was scheduled. This



is the exact type of contact that is prohibited under the FDCPA."

Within one month of filing the lawsuit, a settlement offer was made, according to Davidzik. Filing a suit forces the collector to stop making phone calls immediately.

"There are many debt collectors that use legitimate practices, however, there are a few who become

very aggressive and completely disregard the rules," Davidzik said. "And unfortunately, debtors don't always know the rules, so they don't immediately recognize they are being harassed."

Under the FDCPA, debt collectors cannot call before 8 a.m. or after 9 p.m. They cannot call multiple times during a day, leave voicemail messages at a work number or continue to call a workplace if the debtor has asked them not to call there.

"They also cannot talk to relatives, friends or neighbors and tell them they are calling about a debt. Their statements must also be truthful -- if they say they are referring the claim to an attorney or they are calling the sheriff -- those statements must be accurate," Davidzik said. "Also, they cannot say that your only option is to transfer a debt to another credit line you might have available to you."

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## Is a Mortgage Loan Servicer a Debt Collector?



By Brad Davidzik  
Attorney

The recent housing crisis has exposed a whole new group of people to the world of debt collection. It's the segment of the population that's current on all of their bills except one: the home mortgage.

Through the use of exotic products like adjustable rate, payment option, interest only, and teaser-rate mortgages, many tapped into their home's equity to pay off credit card debt, make home improvements, or send their kids to college. These folks really had no idea what type of product they were getting, or that their monthly mortgage payment would eventually increase significantly.

And, they certainly never envisioned that, a few years later, they would be behind on their mortgage loans and subjected to persistent collection efforts by the loan servicer.

The loan servicer is the entity that administers the loan. It sends out billing statements, collects monthly payments, manages the escrow account, and is the point of contact for questions. Essentially, the servicer is the only company that the consumer deals with.

Sometimes the loan servicer also owns the mortgage, and sometimes the bank will sell the mortgage to another bank, but retain the loan servicing duties. It is common for the loan servicing to be transferred multiple times during the life of the loan.

Everyone knows the typical debt collector; that is, the agency hired to pursue debtors and convince them to pay back at least a portion of what is owed on, for example, an old credit card debt. The abusive tactics of some of

these companies has led to a wave of lawsuits brought under the Fair Debt Collections Practices Act (FDCPA).

The FDCPA places many limitations on how a debt collector can go about collecting a debt. Collectors cannot lie, threaten, harass, or mislead you. They must also provide numerous notices, both verbal and written.

With millions of people behind on their mortgage loans, the loan servicers have had to ramp up their collection efforts in the past few years. Many are not



sufficiently staffed or properly trained to handle the significant increase in loan defaults.

Once a person is a couple months behind, the loan servicer begins calling in an attempt to work out some sort of settlement or repayment plan. Since the foreclosure process in New York typically takes more than

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In written communications it is against the law for creditors to use misleading or threatening language.

"We have many clients who are on Social Security Disability and who have collectors call to say their SSD benefit is going to be garnisheed. That is not the case, in almost every circumstance, Social Security payments cannot be seized by a creditor," he said.

Once a lawsuit is filed, it will stop the harassment,

send a message to the debt collector that they must stick to the letter of the law in their collection efforts, and may even help the client pay back the debt they owe.

"The FDCPA exists to protect a debtor's rights. Knowing those rights, is the first step. Educating our clients, and then helping our clients to enforce those rights is where we are able to step in and help," said Davidzik.

# You Have Rights Under The FDCPA If You Are:



- Being contacted by someone regarding an outstanding debt;
- By a third party collection agency (someone other than the original creditor that you owed money to);
- And the debt was for a personal, family, or household purpose (such as a personal credit card, auto loan, medical bill, residential mortgage)

## What types of debts are covered?

The Act covers personal, family, and household debts, including money you owe on a personal credit card account, an auto loan, a medical bill, and your mortgage. The FDCPA doesn't cover debts you incurred to run a business.

## Can a debt collector contact anyone else about my debt?

A collector may contact other people, but only to find out your address, your home phone number, and where you work. Collectors usually are prohibited from contacting third parties more than once. Other than to obtain this location information about you, a debt collector generally is not permitted to discuss your debt with anyone other than you, your spouse, or your attorney.

## Can a debt collector contact me any time or any place?

No. A debt collector may not contact you at inconvenient times or places, such as before 8 in the morning or after 9 at night, unless you agree to it. And collectors may not contact you at work if they're told (orally or in writing) that you're not allowed to get calls there.

## What does the debt collector have to tell me about the debt?

Every collector must send you a written "validation notice" telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don't think you owe the money.

## What practices are off limits for debt collectors?

**Harassment.** Debt collectors may not harass, oppress, or abuse you or any third parties they contact. For example, they may not:

- use threats of violence or harm;
- use obscene or profane language; or
- repeatedly use the phone to annoy someone.

**False statements.** Debt collectors may not lie when they are trying to collect a debt. For example, they may not:

- falsely claim that they are attorneys or government representatives;
- falsely claim that you have committed a crime;
- falsely represent that they operate or work for a credit reporting company;
- misrepresent the amount you owe;

## Debt collectors also are prohibited from saying that:

- you will be arrested if you don't pay your debt;
- they'll seize, garnish, attach, or sell your property or wages unless they are permitted by law to take the action and intend to do so; or
- legal action will be taken against you, if doing so would be illegal or if they don't intend to take the action.

**Unfair practices.** Debt collectors may not engage in unfair practices when they try to collect a debt. For example, they may not:

- try to collect any interest, fee, or other charge on top of the amount you owe unless the contract that created your debt – or your state law – allows the charge;
- deposit a post-dated check early;
- take or threaten to take your property unless it can be done legally; or
- contact you by postcard.



## Is a Mortgage Loan Servicer a Debt Collector? - *Continued from Page 2*

two years to complete, loan servicers are bombarding homeowners with telephone calls and letters in an effort to cure the default.

So, is a mortgage loan servicer subject to the limitations of the FDCPA? Like so many things in the law, it depends.

Under the FDCPA, a debt collector is an entity that is retained to collect on an account that is in default. Therefore, timing is everything.

If the loan servicer was administering your mortgage loan while you were current, and then you defaulted on the loan, subsequent collection activity will not be covered by the FDCPA.

If the loan servicer obtained the right to service the mortgage loan after you already defaulted on your monthly payments, then its collection activity will be subject to the FDCPA.

Mortgage loan servicing rights are transferred quite often. Through the secondary mortgage market, thousands of mortgages are pooled together and sold as a bundle, with a new loan servicer being appointed as well. Naturally, some of the loans are already in default when they are sold, triggering the applicability of the FDCPA.

If you think that a violation of the FDCPA has occurred, contact a consumer law attorney to explore your options. At the very least, the attorney can put an end to the telephone calls. You may also be able to sue the debt collector for the statutory and/or emotional damages that you incurred. Statutory damages of up to \$1,000 can be awarded simply by proving a violation of the FDCPA. You may also be able to recover for the emotional distress that you experienced.

## Warning

Do not delete collection voice mails.

Do not throw away collection letters.

Save them for us to review.

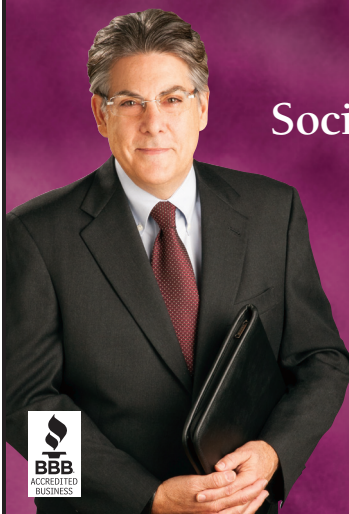
They may help us win your claim for damages

## Debt Collectors Are Prohibited From Doing Lots of Things

The Fair Debt Collection Practices Act (FDCPA) prohibits collection agencies from using abusive, deceptive, and unfair practices to collect a debt from you.

- Threatening arrest for not paying a bill
- Threatening a lawsuit, garnishment, levy, or lien if not actually intending or legally permitted to take such action
- Calling your family, friends, neighbors or employers to collect a debt
- Leaving abusive phone messages
- Insulting, yelling or swearing at you
- Calling your workplace after telling the collector not to call you there
- Lying, threatening, or otherwise harassing you in any way

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