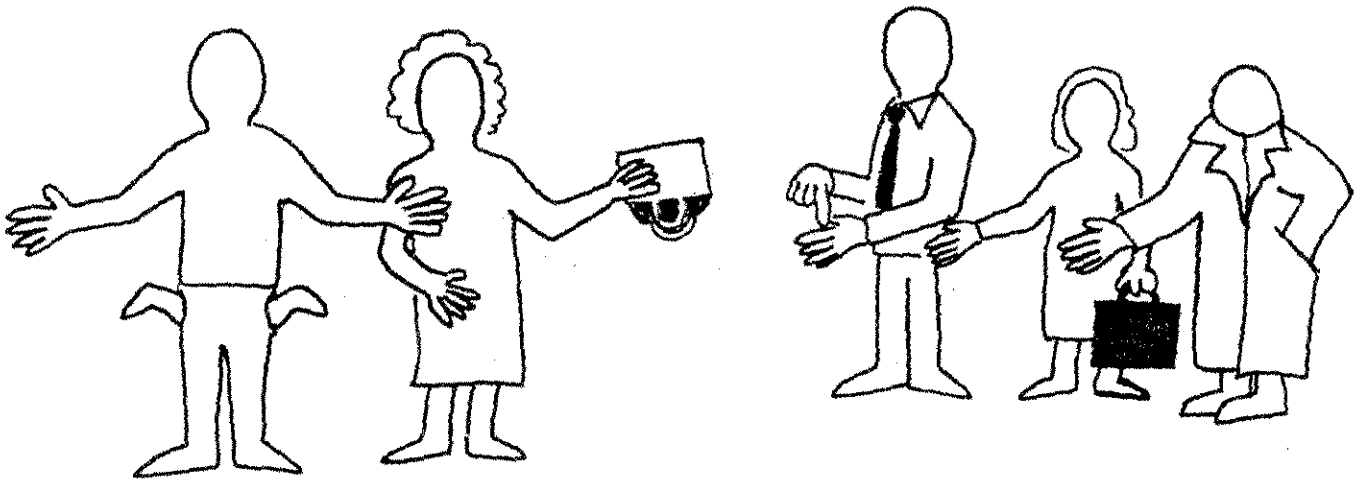


A DEBTOR'S GUIDE



TO UNFAIR DEBT COLLECTION METHODS

A Publication of the Legal Services
Corporation of Iowa

**IMPORTANT NOTICE: READ THIS INFORMATION
BEFORE USING ANY PART OF THIS PUBLICATION**

This booklet is a general summary of the law. It is not meant to completely explain the subjects in this booklet. IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

The information in this booklet was correct as of the date it was printed (see the back cover). The laws may have changed. DO NOT ASSUME THAT THE INFORMATION IN THIS BOOKLET IS NOW CORRECT.

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this booklet for your specific case.

If you need a lawyer but can't afford one, contact Legal Services Corporation of Iowa (LSCI). You may be able to get free legal help. Call or write LSCI. The address and phone numbers are on the back cover.

**AS YOU READ THIS BOOKLET REMEMBER IT IS
NOT A SUBSTITUTE FOR LEGAL ADVICE.**

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A Debtor's Guide to Unfair Debt Collection Methods

The fact that you owe someone money does not mean that you have to put up with any abuse. The law protects debtors against certain unfair methods of debt collection.

READ ON...

IMPORTANT NOTICE

To find out whether the information on Iowa and federal law in this booklet applies to your situation, read the definitions at the beginning of each part very carefully. (See pages 5 and 12).

The explanations contained in this booklet are not exact statements of the law. Instead, they are specially written to be easy to read. In addition, this booklet does not contain all of the legal protections which may be available to someone who owes money and is being harassed. To get a more complete picture of what the law is, you may want to talk to a lawyer, or check the law books.

THE PURPOSE OF THIS BOOKLET

Many people buy things or services on credit, or take out loans which are paid back in installments. For one reason or another, people are sometimes not able to make the payments they had planned to make when they first made the purchase or got the loan. When this happens, some creditors or debt collectors use harsh methods to get the debtor to pay.

The United States Congress and the Iowa Legislature both decided that harsh debt collection methods help cause bankruptcies, family problems, loss of jobs, and invasions of privacy. Special laws were passed to set limits on what a creditor or debt collector can do to collect a debt. This booklet explains many important parts of the law protecting debtors from abuse.

How To Use This Booklet

This booklet is divided into two main parts: Iowa Law and Federal Law. This is because separate sets of laws have been passed by the two different levels of government, state and federal. The two sets of laws are similar in many ways, but there are also some important differences. **So read the definitions at the beginning of each part very carefully.** If the law explained in one part of this booklet doesn't help with a particular situation, make sure and check the other part.

Is it Legal in Iowa to Tape-record a Phone Conversation?

It may be legal for a consumer to tape record a telephone conversation in some situations, but care must be taken to comply with certain laws and regulations. It is legal to tape record a telephone conversation under Iowa and federal law if:

1. The person doing the recording is a known participant in the conversation; that is, the person being recorded knows that the person recording the conversation is on the line; and
2. The conversation is being recorded for a legitimate purpose.

It may be legal to record a conversation in some other circumstances, but these guidelines set out a "safe zone" for taping telephone conversations.

It is not a *crime* to tape record a conversation without telling the other party that it is being recorded, but telephone company rules and regulations do require the use of a beep tone every 15 seconds if a conversation is recorded. While violations of the rule is not a crime, the phone company can enforce this rule and could deny telephone service to someone who does not comply with the rule.

These rules on recording telephone conversations apply to consumers generally, but lawyers may not record conversations without telling the other party that a recording is being made. It is a violation of the Code of Professional Responsibility to record a conversation without informing the other party.

What Can a Debt Collector Legally Do If I Fall Behind in Payments?

This entire booklet discusses what a collector can and cannot do to collect a debt. But a few important points about debtor's rights should be emphasized from the start:

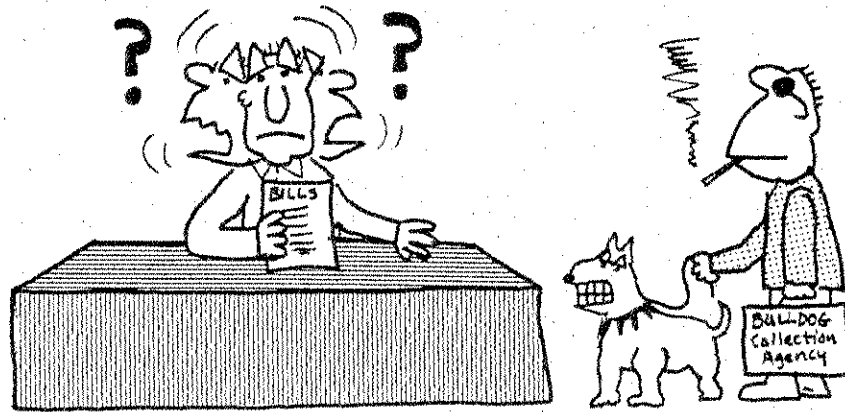
1. **There is no debtor's prison.** Being in debt is not a crime, as long as the indebtedness was not part of a criminal activity, like theft. Common debts, where a person receives merchandise or services on credit, fully intending to pay for it, but then for some reason does not pay for it, do not result in arrest or jail.
2. **Your paycheck or bank account can't be garnished unless the creditor first wins a judgment against you.** Before a creditor can have your paycheck or bank account garnished, he or she must file a lawsuit against you in court (which involves serving papers on you) and must win a judgment in court. Even if the creditor gets a judgment, there are strict limits on the portion of take-home pay which can be garnished.

First, there are limits on how much can be garnished from wages in a year. It depends on the debtor's income. Here are the income ranges and yearly garnishment limits:

have taken place. So a debtor should have a lawyer decide the chances of winning, and if the odds seem good, the attorney may agree to take the case. A debtor should make a point of discussing with the attorney the fact that the attorney's fees could be ordered by the Court to be paid by the debt collector. Since many lawyers may not have had an opportunity to represent debtors in this area of the law, they may not be aware that their attorney fees can be paid by the debt collector.

If you cannot afford an attorney and you cannot find an attorney to represent you without payment, contact the Legal Services Corporation of Iowa at the toll-free number on the back of this booklet to find out the location of the Legal Services Office nearest you.

A debtor may not need a lawyer if the debtor is being sued - or wants to bring a lawsuit - in Small Claims Court. Small Claims procedures are simple and the Clerk of Court can help explain how they work. In addition, the Legal Services Corporation of Iowa has a booklet available explaining the operation of Small Claims Court.



PART I: IOWA LAW

This part explains certain important sections of Iowa Law relating to protections against unfair methods of collecting debts. The Iowa law on this subject can be found in the *Code of Iowa*, Chapter 537. 7101-7103. Your local library and courthouse probably have copies of the Code of Iowa, if you want to read the actual words of the law.

What Situations Does the Iowa Law Cover?

Not every debt collection situation is covered by the Iowa law explained in this pamphlet. Therefore, it is important to read the definitions below very carefully to see whether the debt collection situation you have in mind fits the definitions and is covered by the protections of Iowa law.

"DEBT" means owing money to a person or business selling things or services for personal, family or household purposes. "DEBT" also includes owing money on a loan, if the loan was made by someone in the business of making loans and the money was borrowed for personal, family or household purposes. Money owed for certain leases can also be "DEBTS."

"DEBTOR" means the person owing the money on the debt.

"DEBT COLLECTOR" means the person or business attempting to collect the debt, whether for himself or herself, or for anyone else.

Can a Debt Collector Make Threats in Order to Get Someone to Pay Off a Debt?

As a rule, it is **ILLEGAL** for a debt collector to try to collect a debt by using threats or coercion. "Coercion" means using a lot of pressure to force someone to do something, like pay a debt. Here are some examples:

- * direct or indirect threats to harm persons or property.
- * threats to falsely accuse a person of a crime.
- * threats that the debtor may be arrested for non-payment of a debt.
- * threats to falsely accuse that the debtor is willfully refusing to pay a valid debt.

REMEMBER: These are not the only threats or coercion which are against the law. The specific examples here (and below) just help to show the sort of illegal activity the law protects against.

- * calling someone other than the debtor and leaving a message which indicates that the debtor might owe money.
- * contacting the debtor's husband or wife without the debtor's permission, except in direct response to the husband's or wife's earlier call or letter.

How Far Can a Debt Collector Go in Bothering Someone to Get Them to Pay a Debt?

It is **ILLEGAL** for a debt collector to oppress, harass or abuse a person in attempting to collect a debt. Here are a few examples of such illegal methods:

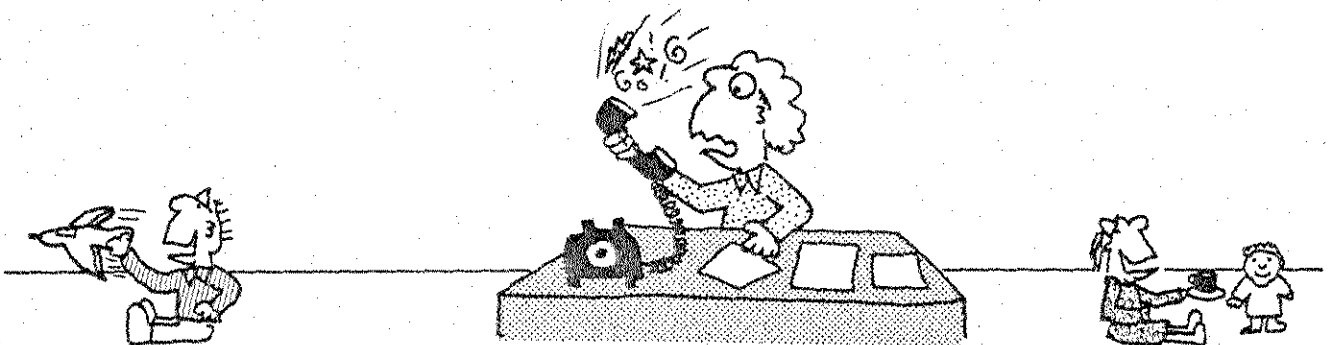
- * the use of foul language or profanities which amount to "fighting words."
- * phoning the debtor without identifying the business the debt collector represents.
- * phoning too often, or at unusual times, or holding a person on the line too long, with intent to annoy or threaten the person.

Can a Debt Collector Keep Contacting a Debtor Even When the Debtor Has Gotten a Lawyer?

If a debt collector knows that the debtor is represented by a lawyer and knows who the lawyer is, it is **ILLEGAL** for the debt collector to contact the debtor. The debt collector must deal with the debtor's lawyer from that point on.

There are three exceptions to this. A debt collector may contact the debtor, rather than the debtor's lawyer, if:

1. the lawyer has given permission;
2. the lawyer won't respond promptly to the debt collector's contacts;
3. the debt collector is responding to direct contact from the debtor.



How Can a Debtor Who is Suffering From a Debt Collector's Violations of Iowa Law Get the Collector to Stop?

There are three main ways of stopping a debt collector's illegal behavior. First, a debtor can write a letter to the collector stating that the contacts should

stop, because, for example, the phone calls are causing unnecessary inconvenience and irritation. It would be best to send such a letter by certified mail, with a return receipt, so that you could prove the collector received it, and you should always keep a copy for your own records. A sample letter is contained on page 9.

A second way to stop a collector's abuses: a debtor can bring a lawsuit against the debt collector. The lawsuit could request a court order for the debt collector to stop, and could also request that money be paid to the debtor as damages. Money damages will be explained later on in this booklet.

A third way to stop abuses: a debtor can contact the Consumer Protection Division of the Iowa Attorney General's Office in Des Moines. That office has the power to investigate complaints and to try to settle disputes. Their telephone number is (515) 281-5926. The address is:

Iowa Attorney General's Office
Consumer Protection Division
Hoover Building, Second Floor
Des Moines, Iowa 50319

You can also access information from the Consumer Protection Division of the Iowa Attorney General's Office through the Internet. The url is:

<http://www.state.ia.us/government/ag/consumer.html>

WARNING TO DEBTOR: If a debt is based on an unwritten contract and is more than 5 years old, or is based on a written contract and is more than 10 years old, the creditor has probably lost the right to enforce the debt in court. But the creditor can get that right back if you admit the existence of the unpaid debt in a signed writing, or in some cases if you make a payment on the unpaid debt. So if you are in this situation, talk to a lawyer before putting **ANYTHING** in writing to the creditor.

If a Debtor Wants to Take a Debt Collector to Court Because of the Collector's Violations of Iowa Law, Are there any Time Limits for Starting the Lawsuit?

Yes. If the debtor is the one to start a lawsuit based on the violations of Iowa law, the lawsuit has to be started within certain time limits. If the debt in question is based on "open-end" credit, such as a continuing charge account like a credit card arrangement, then the lawsuit must be started ***within two years*** of when the violation occurred. Otherwise, a debtor has ***one year from the last scheduled installment payment*** to start a lawsuit based on a violation of the Iowa fair collection laws.

If the collector sues the debtor to collect the debt, the debtor can always raise any unfair debt collection practices as a defense, no matter how long ago they occurred. A debtor who is the victim of collection abuses should ***not*** assume it is too late to do anything about it. Instead, the debtor should talk to a lawyer about it as soon as possible after the violation occurs.

PLEASE NOTE that these definitions are simplified for purposes of making this booklet easy to read. If there is any question about whether your situation is covered by either Iowa law or federal law, you may want to check the words of the laws themselves, or see an attorney.

What Does a Debt Collector Have to Tell a Debtor When the Collector First Contacts the Debtor About Paying the Debt?

There is certain information a debt collector must give the debtor in **writing**, either as part of the collector's first contact with the debtor or within 5 days after the first contact. The written statement has to tell the debtor **each** of the following things:

1. the amount of the debt.
2. the name of the person or company the debt is presently owed to.
3. the fact that the debtor has 30 days from receiving this written notice to inform the debt collector in writing that the debtor doesn't believe he or she really owes the money or doesn't owe at least part of the money. The debt collector will assume the debt to be valid unless the debtor responds within this 30 day period.
4. the fact that the debt collector will give the debtor proof of some kind that the debt is owed, if the debtor does write the collector during the 30 day period and expresses doubt about whether the money is really owed.
5. the fact that the debtor has 30 days to request in writing that the debt collector provide the name and address of the person or company the debt was originally owed to, if different from the one the collector says the debt is presently owed to. Also, federal law (and in most cases Iowa law) says the first written letter from the debt collector to the debtor must tell the debtor that the debt collector is trying to collect the debt. However, Iowa law exempts legal pleadings and letters from certain financial institutions from this requirement. The first written letter must say that any information obtained will be used to try to collect a debt. The debt collector must also tell the debtor this information if the first contact with the debtor is oral. Any future written communication must inform the debtor that the communication is from a debt collector.

If the debtor does write the debt collector within the 30 days, either for proof of the debt or for the name and address of the person or company the debt was originally owed to, the debt collector may **not** take any other steps to collect the debt until the requested information has been sent to the debtor. The fact that a debtor does not call the debt into question within 30 days **cannot** be used later in court to show that the debtor admitted the debt was proper.

Are There Limits on When and Where a Debt Collector Can Visit or Phone a Debtor?

Yes, fairly strict limits. Without the advance permission of the debtor, it is **ILLEGAL** for a debt collector to phone or visit a debtor at any unusual time or place, or at a time or place which the collector should know would be inconvenient for the debtor. It will generally be assumed that any contacts before 8:00 in the morning or after 9:00 at night are inconvenient, unless the collector knows of some special circumstances that would make earlier or later contacts convenient to the debtor.

Can a Debt Collector Phone or Visit a Debtor Where the Debtor Works?

A debt collector **may** contact a debtor at the debtor's place of work **unless** the collector has reason to know that the debtor's employer does not allow employees to receive such contacts.

How Far Can a Debt Collector Go in Contacting the Debtor's Friends, Relatives, and Neighbors to Discuss the Debtor's Situation?

As a rule, it is **ILLEGAL** for a debt collector to discuss the debtor's situation with **anyone** except:

- * the debtor's husband or wife.
- * the debtor's lawyer.
- * a consumer reporting agency (credit bureau).
- * the debt collector's lawyer.
- * the person who the debt is actually owed to, or that person's lawyer.

The only time a debt collector can discuss a debt with a person not included in the above list is if the debtor gives permission in advance. In attempting to locate a debtor, a debt collector may contact anyone, but may not discuss the debt situation with the people contacted.

Are There Any Rules About What a Debt Collector Can and Cannot Do When the Collector is Trying to Locate the Debtor?

A debt collector who is trying to locate a debtor must go by strict rules. These rules are meant to protect the debtor's privacy and to protect those who know the debtor from being harassed.

A debt collector who contacts anyone other than the debtor in order to try to locate the debtor must identify himself or herself, state that he or she is getting location

information, and **not** identify the collector's employer (the debt collection company...) unless directly asked.

It is ILLEGAL for a debt collector in this situation to do **any** of the following:

- * say that the debtor owes any debt.
- * contact someone more than once for help in locating the debtor, unless the person asks to be contacted again, or unless the collector has reason to believe the person has new information about where the debtor is.
- * communicate by post card.
- * send anything which indicates that the collector is in the debt collection business or is in the process of collecting a debt.

Does a Debt Collector Always Have to be Truthful in Attempting to Collect a Debt?

Yes. It is ILLEGAL for a debt collector to mislead or lie to a person in connection with the collection of any debt. Here are a few examples of such illegal activity by a debt collector:

- * Giving the false impression that the collector is a government employee or a lawyer.
- * Lying about the amount of the debt, or about what legal processes are taking place.
- * Claiming that non-payment of the debt will result in the debtor's arrest or imprisonment.
- * Claiming that non-payment of the debt will result in the debtor's wages being garnished or property being sold, unless such garnishment or sale is legal under the circumstances and the debt collector actually plans to take the threatened action.
- * Threatening to take any action which the collector doesn't really intend to take, or which is illegal.
- * Using papers made to look like court documents or government documents, when they really aren't.

Can a Debt Collector Keep Contacting the Debtor or People Who Know the Debtor If the Collector Knows the Debtor Has an Attorney?

No. Once a debt collector knows a debtor is represented by a lawyer, and also knows (or can easily find out) the lawyer's name and address, it is ILLEGAL for the collector to contact the debtor again. Instead, the collector must deal with the debtor's attorney. The only exception is if the attorney won't respond to the collector's letters or phone calls within a reasonable time.

How Far Can a Debt Collector Go in Bothering or Harassing a Person When Trying to Collect a Debt?

It is ILLEGAL for a debt collector to harass, oppress, or abuse a person in connection with the collection of a debt. Although anything a debt collector does which harasses, oppresses, or abuses is illegal, the following are some specific examples of illegal actions:

- * Committing, or threatening to commit a crime in an attempt to harm a person or that person's property or reputation.
- * Using foul or obscene language, or other words likely to offend the hearer.
- * Phoning a person too often, or keeping a person on the line for too long, with the intention to annoy the person.

What Can a Debtor Do to Get a Debt Collector to Stop Contacting the Debtor?

Sometimes a debtor may want a collector to stop making contacts, even though the collector's contacts up to that point had not been illegal in any way. To force a debt collector to stop contacting the debtor, all the debtor has to do is write the collector a letter saying either that the debtor refuses to pay the debt or that the debtor wants the collector to stop contacting the debtor. This letter should be sent by certified mail, so the debtor receives proof that the letter was received by the debt collector. Once the debt collector receives the letter, it is ILLEGAL for the collector to contact the debtor again, except to make one contact for one of the following three reasons:

1. To tell the debtor the collector will quit trying to collect the debt.
2. To tell the debtor the specific next step the collector plans to take to collect the debt.
3. To tell the debtor of what steps the collector usually takes to collect a debt in such situations, and that these steps may be taken in the debtor's case.

What If a Debt Collector Is Trying to Collect a Debt in Ways That Are Downright Unfair?

It is ILLEGAL for a debt collector to use unfair or unconscionable methods to collect a debt. "Unconscionable" methods are methods that just wouldn't seem proper or honorable to the average person of good conscience. *Here are a few examples of unconscionable methods:*

- * Acceptance by a debt collector of a check postdated by more than five days, unless the debt collector lets the person who wrote the check know of the collector's intention to deposit the check. The collector must let the person know at least 3 days, but no more than 10 days, in advance of the actual deposit.
- * Threatening to deposit (or depositing) a postdated check prior to the date on the check.
- * Writing to a debtor about a debt by post card.
- * Writing to the debtor in an envelope which has any symbol or words on it except the debt collector's address. The debt collector can't even put the collector's own business name on the envelope if that name indicates that he or she is in the debt collection business.
- * Threatening to take property of the debtor when the debt collector does not actually intend to take it.
- * Taking property of the debtor when the collector does not have a legal right to take it.

How Can a Debtor Who Is Suffering from a Debt Collector's Violations of Federal Law Get the Collector to Stop?

There are three main ways of stopping a debt collector's illegal behavior.

First, a debtor can write a letter to the debt collector requesting that all contacts be stopped. Federal law requires the debt collector to cease collection activity after receipt of such a letter, with minor exceptions. (See page 12). If contacts continue even after a debtor writes a "cease" letter, the debtor should take further action, as discussed below. And, of course, a debtor could take the steps below without ever writing a "cease" letter. Such a letter is just one possible remedy.

Second, a debtor can bring a lawsuit against the debt collector. The lawsuit could request a court order for the debt collector to stop and could also request that money be paid to the debtor as damages. Money damages will be explained later on in this booklet.

Third, a debtor can contact the Federal Trade Commission. The Commission has the power to investigate complaints and to try to settle disputes. The number of the Chicago Regional Office which serves Iowa is (312) 353-4423.

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