

# Creditor Harassment Best Practices

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## When Will Creditors Harass You?

### Before Filing Your Bankruptcy

Prior to filing your bankruptcy petition, Sulaiman Law Group will have notified your creditors that you have retained an attorney to advise you in your financial affairs. The letter will also advise your creditors that they are not to contact you directly. The Fair Debt Collection Practices Act requires your creditors to cease communication with you as soon as they receive the letter. Some creditors may comply. Others will not. Some creditors may contact you to ask whether you are planning on filing a bankruptcy. Some may call, “just to see what the letter is all about.” You may receive mail from other creditors asking similar questions.

No matter what reason your creditors give for contacting you, they are violating the Fair Debt Collection Practices Act. Each and every attempt to contact you, once we have sent our attorney representation letter, technically violates the Act. However, current federal case law indicates that you can only recover statutory damages once – you cannot stack multiple contacts on top of each other to increase your statutory damages.

### While Your Bankruptcy Is Pending

After you file your bankruptcy petition, but before you receive your discharge, you and your property are protected from collection attempts by creditors. This is known as the automatic stay. With very few exceptions, this stay is absolute. Creditors cannot attempt to collect debts while the automatic stay is in effect. This means that you cannot receive collection calls or letters, it means that creditors cannot attempt to repossess your car, complete a foreclosure proceeding against your home, or attempt to take any of your personal property in order to satisfy a debt.

Some of our clients have received collection calls and letters while protected by the automatic stay. The U.S. Bankruptcy Code provides remedies for violations of the automatic stay. Later in this guide, you will learn what to do with these communications.

### After You Have Received Your Discharge

In a perfect world, your discharge would end all collection efforts. This is not a perfect world. Many creditors are unable to process information related to your discharge and will attempt to collect a discharged debt. Some creditors will sell that discharged debt to a third party known as a debt-buyer. Debt-buyers make their money by purchasing discharged debt for pennies on the dollar. If they collect

even a portion of the purchased debt, they likely make a profit. This behavior violates the protection of the bankruptcy discharge and likely violates the Fair Debt Collection Practices Act and the Fair Credit Reporting Act.

## What Can You Do?

### Document Everything

It cannot be said enough that the key to fighting creditor harassment is to document everything. It is better to provide your attorney too much information than not enough. If you document every contact from every creditor thoroughly and completely, then you can fight your creditors from a position of strength. Don't worry about what is and is not relevant, assume that any contact from any creditor is worth documenting. It is our job to evaluate those contacts and find the best, most effective claims.

### Learn To Record Phone Calls

So long as you give notice to the person on the other end of the line, you can legally record a phone call. Recording phone calls is one of the most powerful tools you have for fighting back against creditor harassment. You may find that you actually enjoy answering those annoying phone calls. Here is how to record a call:

1. Start your tape recorder.
2. Put the call on speaker phone.
3. Say the following: "I am recording this phone call. If you continue talking, that means that you consent to being recorded."
4. Record the entire call.
5. Stop recording when you hang up.

If the creditor's agent doesn't stop talking, you have a validly recorded call. By recording the call, you can often document other violations. For instance, if the person calls you an offensive name or swears at you, then that is a violation of the Fair Debt Collection Practices Act. That violation can be pursued in addition to other potential violations. Without the recording to back up your claims, most violations become "he-said, she-said" battles. Although it is possible to win based on the strength of your testimony alone, having a recording is always the best means of proving your claims.

It is very important that you keep a written log of every call. Attached to this guide is a log sheet that you can use to document the calls you receive. If you have recorded a call, it is always best to write the call's date on the tape and document that call on your log. It will help you keep your tapes organized, and will make it easier to find a specific tape when you need it.

Keep your tapes in a safe place. Do not record over your tapes. From time to time, bring your tapes to our offices so that we can make digital backup copies of them. You will still need to keep your tapes stored in a safe place. This is important because the tapes may become evidence at a future trial. In order for them to be admitted as evidence, we must be able to account for their location at all times from the time you make the tape to the time it is presented to the court.

Careful documentation and storage will become one of your most important jobs. Each time you document a potential violation, you are adding to your potential future recovery.

## Learn To Ask The Right Questions

When you receive a call from a creditor, you should be recording it. If you are properly recording the call, you should also be asking questions. If the person on the phone gives you what turns out to be false or misleading information, then that is another violation of the Fair Debt Collection Practices Act. If the creditors are going to take your time, then you should make the best possible use of that time.

Ask questions like:

1. What is your name?
2. What is your operator identification number?
3. Who do you represent?
4. What alleged debt is this regarding?
5. When did you purchase this debt?
6. Who did you purchase it from?
7. Based on your records, what is the balance due?

The key is to always ask questions using the W's – who, what, when, where, why. You want to make the person answer in as much detail as possible. If the person cannot answer, ask to speak to someone who can answer your questions. Always keep the creditor's agents talking. The more they say, the more potential claims you may discover.

If you ask no other questions, always be sure to find out to whom you are speaking. Get a name and an operator ID number. These are key pieces of evidence that help build a foundation for introducing that phone call at trial.

## Learn To Properly Open and Store Letters

If you don't have a letter opener, get one. When creditors send you letters, it is important to save each and every letter. You also want to save the envelope. The most important thing about the envelope is the postmark. That postmark is valuable evidence. This is why using a letter opener is so important. You want postmarks to be 100% legible and undamaged.

If you don't have a file box, get one. The \$20 spent on a file storage box and folders is an investment in your financial future. Make a folder for each creditor. As you receive correspondence, store the letters in the appropriate folder. Once you have a decent amount of letters, bring them to our offices. We will scan those documents and store them on our server. Just like the audio tapes, you will still want to retain the original documents.

## Learn To Read Your Credit Report And Store Copies of Previous Reports

After your bankruptcy discharge, you will be able to change the negative reporting on your credit into zeroed-out balances. Your creditors cannot report the debts as anything else. If they do, they are probably violating several state and federal laws. The best way to prove these violations is to engage in the dispute process with the three major credit reporting bureaus.

You will need to obtain and store copies of your credit report. Our offices can assist you with this process. You will also need to learn to identify old debts masquerading as new debts. This will often happen because your creditors sold your discharged debt to a third party. If a debt suddenly pops up on your credit report, and you don't recognize the name of the creditor, pay close attention to the balance due. Does it match a debt you discharged in bankruptcy? If it does, you are likely looking at an entry created by a debt-buyer. Armed with that knowledge, it is possible to pursue violations *and* have the discharged debt removed from your credit report.

## What Kind of Damages Can You Claim?

Most statutory violations allow for statutory damages. This is a damage award that is specifically set in the statute. In the vast majority of cases, these damages cannot be increased. Individual violations may each carry their own damage award, but if the statute sets damages at \$1,000 per violation, you will only receive \$1,000 per violation.

Most statutes also allow you to recover your attorney's fees.

You may also be able to ask for actual damages. These are damages that you can prove by submitting evidence to the court. For instance, if a creditor's fraudulent credit reporting practices cause you to pay a higher interest rate on an automobile loan than you would normally pay, you can claim the increased

cost of credit as actual damages. If a creditor's harassment causes you to lose sleep and experience emotional distress, it may be possible to recover for that injury as actual damages.

In some special cases, you may be eligible for punitive damages. Punitive damages are designed to punish excessively bad behavior. In most cases, a debtor will not be eligible for punitive damages. However as more consumers defend themselves against the bad acts of creditors, their cases become part of the public record. More importantly, the documents filed as evidence in those cases become part of the public record. It may be possible to demonstrate that a single bad act by a specific creditor is part of a larger pattern and practice of bad acts by the creditor. Basically, the creditor decided that it was cheaper to break the law than to comply with the law. It may be possible to recover punitive damages based on that pattern and practice of bad acts. When creditors institutionalize their negative behavior, everyone suffers.

## A Hypothetical Case

Mike Jones is in bad financial shape. He consults his attorney, Max Shepard, who advises Mike to file a Chapter 13 bankruptcy. The Chapter 13 plan will allow Mike to keep his home, and will protect other assets that Mike does not want to surrender. Prior to filing the Chapter 13 petition, Max teaches Mike about creditor harassment and the best ways to document the harassment. Mike follows Max's instructions to the letter.

Prior to filing, one of Mike's creditors, GriftCo, ignores Max's attorney representation letter and calls Mike to find out what he is planning to do. Mike dutifully informs GriftCo's operator that he is recording the call. This angers the operator, who just wants to collect enough money to make his daily quota. The operator says, "Look here you deadbeat, you need to shit or get off the pot. If you don't make a decision about filing bankruptcy, we'll go file an action for a writ of body attachment and have you arrested until you pay off this debt." Mike politely disengages from the operator's phone call and brings his tape to Max.

Max identifies the following violations: 1) GriftCo is liable for statutory damages pursuant to the FDCPA because it contacted Mike after receiving notice that Mike was represented by Max; 2) GriftCo further violates the FDCPA because its operator used profane and insulting language when attempting to collect a debt from Mike; 3) GriftCo racks up a third FDCPA violation because it threatened legal action against Mike ("action for writ of body attachment" is just a bunch of words we strung together to sound menacing); 4) GriftCo violates the Illinois Unfair And Deceptive Practices Act for lying to Mike in an attempt to collect a debt; 5) GriftCo has also violated the Illinois Consumer Fraud Act because the threatened arrest would be considered an unfair and deceptive act under the Federal Trade Commission Act.

This means that GriftCo is potentially on the hook to Mike for \$3,000 in statutory damages for the three FDCPA violations, another \$2,000 for statutory damages on the state law claims, and actual damages to be proven at trial. It may also owe Mike his attorney's fees. All told, GriftCo is on the hook to Mike for at least \$5,000, solely based on one recording made by Mike.

## **What Can Sulaiman Law Group Do?**

### **Advise**

We can advise you on best practices for managing your affairs and for maximizing your ability to fight back against creditor harassment. We can advise you on other matters as well. As attorneys, we also fill the shoes of a counselor. Our product is knowledge, experience, and advice.

### **Pursue Claims**

If you are diligent in documenting the actions of your creditors, then we can possibly pursue claims against them. The process can be lengthy, but protecting your rights is not something to be taken lightly or done without the utmost care and deliberateness. You worry about collecting and documenting the information, we will worry about identifying the claims.

### **Defend**

When you need to respond to creditor harassment, the best defense is a good offense. In order to better help you defend your rights, we will require you to work closely with us. While we cannot guarantee results, we can guarantee that if you do nothing, you will have missed an opportunity.