



housing and  
economic  
rights advocates

## Statutory Consumer Rights in Debt Collection and Credit Reporting Housing and Economic Rights Advocates

[www.heraca.org](http://www.heraca.org)

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- Debt Collection
  - Players
    - Creditors
    - Third Party Debt Collectors
    - Debt Buyers
    - Consumer
- Fair Debt Collection Practices Acts (federal and state)
  - Federal FDCPA (FDCPA, 15 U.S.C. § 1692) and state FDCPA (Rosenthal Act, Cal. Civil Code § 1788)
    - If debt collector is collecting the debt of others both apply.
    - If collecting own debt, only Rosenthal Act applies.
    - FDCPA applies to all kinds of consumer transactions.
    - Rosenthal Act applies only to extensions of credit.
  - Requirements for Debt Collectors
    - Debt Validation notice § 1692g
      - Within 5 days of first contact must send notice giving:
        - Exact amount of debt.
        - Name of creditor.
        - Statement telling consumer she has 30 days after receipt of notice to dispute validity of debt or else debt collector will assume it is valid.
        - If debtor requests validation of debt within 30 days, debt collector has to stop collection efforts until it gives verification of debt.
    - Mini-Miranda § 1692e(11)
      - Debt collector must identify itself as such in communications.
    - Additional required state disclosure. Civil Code § 1812.700
      - First letter has to contain script on debtor rights under FDCPA and Rosenthal Act.
      - Notice has to be provided in language of first oral collection contact.
  - Prohibitions: Rosenthal Act both mirrors and incorporates (Civil Code § 1788.17) FDCPA prohibitions.
    - Generally, using any “harassing,” “unfair,” or “deceptive” means to collect a debt. § 1692e.

- Telephone harassment.
      - Calling before 8:00 am or after 9:00 pm.
      - Repeated and annoying calls.
    - Contacting third parties except for consumer or consumer's spouse.
      - Can call third party only to find consumer's whereabouts and can't disclose that consumer owes a debt.
    - Contacting a consumer who is represented by counsel.
    - Contacting at work after consumer tells them it is inconvenient.
    - Threats of violence or other criminal activities.
    - Using obscene/profane language.
    - Falsely stating that creditor is affiliated with the government.
    - Misrepresenting the character, amount or legal status of debt.
    - Falsely implying that communications are from an attorney.
    - Threatening to take action that isn't legal or intended.
    - Suing the consumer somewhere other than where the contract was signed or where the consumer resides.
    - Protections are non-waiveable.
  - Cease and desist letters, § 1692c(c).
    - If consumer sends a letter to the collector stating that she won't pay the debt or just wants them to stop contacting her, the collector is only allowed one final contact to tell consumer what they intend to do.
      - For this section "consumer" includes spouse, guardian or executor.
  - Remedies, § 1692k, Civil Code § 1788.30.
    - Similar
      - Actual damages: compensate for embarrassment, humiliation, fear and physical illness experienced as a result of the violations.
      - Statutory penalty: Up to \$1,000-probably per lawsuit. Can get separate statutory damages under each statute.
      - Class action: maximum of the lesser of \$ 500,000 or 1% of the net worth of the debt collector.
      - Attorneys fees and costs.
    - Defenses
      - Bona fide error.
      - Cross-complaint on debt owed.
- SB 233: debts purchased after January 1, 2014.
  - Regulates "Debt Buyers."
  - Applies to debt sold after 1/1/14.
  - Debt Buyer can't make written collection efforts unless has specific info re: debt and copy of contract. Civil Code § 1788.52
    - Records showing that debt buyer has right to collect.
    - Debt balance including explanation of post-charge off fees and interest.
    - Name of original creditor and account number.
    - Name and last known address of debtor from original creditor's records.

- Names of entities that purchased debt.
  - Debt Buyer has 15 days from debtor's written request to provide all of this information to debtor or else must cease collection efforts until it does.
  - Has to provide written statement of debtor's right to this information in first written communication.
  - Have to notify that they will not sue on or if more than 7 years report time barred debt
  - If initial oral contact is in language other than English, mandatory communications have to be in same language.
- Settlement of Debts. Civil Code §1788.54.
  - Settlement agreements have to be documented in open court or otherwise reduced to writing and given to debtor.
  - Have to give receipts for payments within 30 days.
  - Have to give final statement if account paid in full.
  - Can't sell resolved debt or any information related to it.
- Lawsuits on debts. Civil Code §1788.58.
  - Can't initiate legal action if SOL has expired.
  - Complaint has to allege:
    - That plaintiff is debt buyer
    - That plaintiff is sole owner of debt or has authority to act on behalf of all creditors.
    - Nature of underlying debt and consumer transaction from which it is derived.
    - Debt balance at charge off and explanation of all post-charge off fees and interest.
    - Date of default or last payment.
    - Identify original creditor and account number.
    - Name and last known address of debtor from original creditor's records.
    - Names of entities that purchased debt.
    - That debt buyer complied with notice provisions of statute.
    - Copy of contract or other doc evidencing debt.
- Remedies
  - Same as for FDCPA and Rosenthal but can't seek in addition to.
- Additional procedural amendments under SB 233.
  - Court has discretion to dismiss with prejudice and award defendants costs of preparation, "including but not limited to, lost wages and transportation expenses" if plaintiff unprepared for trial. CCP 581.5.
  - Heightened notice requirements for liens and garnishment.
- Credit Reporting
  - Players
    - Credit Reporting Agencies ("CRAs")
    - Furnishers-those who provide information to CRAs
    - Users-those who buy credit reports to make decisions about extending credit, employment, etc...

- Consumers
- Fair Credit Reporting Act (FCRA, 15 U.S.C. § 1681, et seq. and 16 C.F.R. § 600, et seq., Cal. Consumer Credit Reporting Agencies Act (CCRAA, Civil Code § 1785.1, et seq.)
  - Similar in protections.
- Getting your credit report
  - One free report per year from each of 3 agencies (annualcreditreport.com).
  - Free report if you are denied credit based on information in a report.
- Errors
  - E.g. identity theft, merged identity, dispute
  - An item on a credit report can be incomplete or inaccurate because it is patently incorrect, or because it is misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions. E.g. *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 890 (9th Cir. Cal. 2010).
  - Obsolete information (1681c): 7 years for most information. 10 years for bankruptcies.
- Disputing errors
  - Consumer—not attorney—should request correction.
    - Best to dispute in letter sent by certified mail, return receipt requested.
  - Must identify the specific information that is being disputed, explain the basis for the dispute, and include all supporting documentation required by the furnisher to substantiate the basis of the dispute. 1681s-2
  - CRAs required to conduct “reasonable investigation,” forward “all relevant information” to furnisher within 5 days. 1681i. Furnishers required to investigate disputes. 1681s-2(b).
    - CRAs generally have 30 days to respond.
  - Furnishers required to
- Remedies for failure to correct errors
  - Civil Code § 1785.31 and §§ 1681o, 1681n (similar)
  - Willful non-compliance §1681n
    - Actual damages (credit denials, emotional distress) or (for FCRA) \$1,000, whichever is greater.
    - Attorneys fees and costs.
    - Punitive damages (CCRAA limits to between \$100-\$5,000)
    - Injunctive relief (CCRAA)
  - Negligence non-compliance
    - Actual damages
    - Attorneys fees
- Special protections for identity theft:
  - FCRA § 1681c-2: CRAs have to block reporting after properly notified.
  - Cal. Civil Code §§ 1798.92-97, 1788.18, 1785.16(k), 1785.16
    - Victims of ID theft need to follow procedure for protections to apply. Then creditor must conduct an investigation. If proper investigation not

done, can bring action for declaratory relief, damages, and attorney fees. CRAs must delete fake tradeline upon receipt of police report and can only reinsert if investigation finds no ID theft.

- Entitled to declaratory relief, actual damages and attorney fees. Punitive damages of \$30,000 if creditor had notice of ID theft, failed to diligently investigate, and proceeded to prosecute claims. Civil Code § 1798.93.