

Is All Debt Collection Governed By The FDCPA? by Karen Oakes, Southern Oregon Bankruptcy Attorney on July 28, 2008

In order for a debt to be governed by the Fair Debt Collection Practices Act, there are some requirements:

- The debt must be a consumer debt: The debt must have been incurred for personal, household, or family reasons;
- A debt collector must be involved: A debt collector (not the original creditor) collects for another;
- The debtor must be a consumer: Any actual person
- There must be a violation: A violation is anything that is untrue, unfair, disrespectful, or undignified done by the debt collector to the consumer.

I get frequent phone calls from small business owners where the original creditor has given up trying to collect a debt and assigned the debt to a debt collector. Business debt collectors may use tactics that would violate the law if done by a debt collector trying to collect a consumer debt. One client was informed that a Federal Marshall from the Special Collections Unit of the Federal Bank Fraud Task Force was on their way to his house to arrest him for a non-sufficient check. Another debt collector spoke about the debt to the businessman's family members.

While these tactics are not governed by the federal Fair Debt Collection Practices Act, the same acts may violate your state laws or common law claims, such as "invasion of privacy", "harassment", or "negligent infliction of emotional distress". The same acts may be a violation of the Unfair Trade Practices Act as adopted by your state. The small business owner suffering from harassment from a debt collector should seek local counsel for advice on how to proceed in order to stop these unfair, disrespectful and undignified acts.