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State of Maine
Bureau of Consumer Credit Protection

**DOWNEASTER GUIDE TO
DEBT COLLECTION AND REPOSSESSION**

ABOUT THE AGENCY . . .

The Maine Bureau of Consumer Credit Protection was established in 1975 to enforce several consumer protection laws:

- Consumer Credit Code
- Truth-in-Lending Act
- Fair Credit Billing Act
- Truth-in-Leasing Act
- Fair Credit Reporting Act
- Fair Debt Collection Practices Act
- "Plain Language" Contract Law

The Bureau conducts periodic examinations of creditors to determine compliance with these laws, and responds to consumer complaints. The staff also conducts educational seminars and provides speakers to advise consumers and creditors of their legal rights and responsibilities.

William N. Lund
Superintendent

John Elias Baldacci
Governor

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DOWNEASTER GUIDE TO DEBT COLLECTION AND REPOSSESSION

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State of Maine.

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INTRODUCTION

Although we all hope to pay our bills in a timely manner, there are the occasions beyond our control (for example, loss of job, divorce) when we may encounter the debt collection process.

Did you know that:

- 1) Collection agencies and repossession companies collecting debts incurred in this State must be licensed?
- 2) You can write a letter to a debt collector requesting no further contact, and the collector must comply with your request?
- 3) If your car is repossessed, it will be sold and you may still owe thousands of dollars on the debt?

Find out more information within the pages of this, the newly revised and updated edition in the series of *Downeaster Consumer Guides*:

Downeaster Consumer Guide to Debt Collection and Repossession

USING THE BOOKLET

The Maine Bureau of Consumer Credit Protection administers the Fair Debt Collection Practices Act. The purpose of this law is to make certain that Maine consumers are treated fairly by debt collectors and repossession companies.

Collections are done in two ways: either directly by a creditor (as when you are called by a credit card company about an overdue bill), or by a **debt collector** or **collection agency** (a separate company that is in the business of collecting debts).

The rules are different for a creditor (the person or company to whom you actually owe the money) than for a debt collector, so ask who you are dealing with, and then determine which rules apply.

This booklet compiles and answers the collection and repossession questions most commonly posed to our staff. Part I deals with debt collectors; Part II (starting on page 12) addresses repossession companies.

REMEMBER: Whether you talk to a creditor or a debt collector, make a note of the date, time and content of the conversation . . . because that's what they are doing on the other end of the line!

PART I - DEBT COLLECTION

1. HELP! I'VE BEEN CONTACTED BY A COLLECTION AGENCY! WHAT SHOULD I DO?

First, determine if you owe the debt. Whether the collection agency contacts you by phone or letter, the debt collector must, within 5 days after the initial communication, offer to "verify" or prove that you actually owe the money.

If initial contact is made by letter, it must contain language such as this:

“If you dispute this debt, we will send you verification. If you do not dispute the debt within 30 days, we will assume that it is valid.”

The collector must also tell you the amount you owe and the name of the person to whom it is owed.

If the debt is not your, or if the collector is asking for more than you owe, *then dispute the debt in writing*, and keep a dated copy of your letter for your records.

2. THE DEBT COLLECTOR THREATENED TO RUIN MY CREDIT HISTORY WITH THE CREDIT BUREAUS. CAN THIS HAPPEN?

The debt has probably already been reported by the creditor and is on your credit report. If a collection agency “threatens” your credit history, ask: *“Are you saying that if I pay this bill today, my bad account history will be erased?”* If the response is “yes,” then get it in writing. Otherwise, you have no guarantee that your credit report will be changed.

However, there may be some collection agencies (usually involving medical debts) that will not report to the creditor bureaus if you pay within a certain number of days, such as within ten (10) days of the date of the notice.

3. IF I OBTAIN A CREDIT REPORT, HOW WILL I BE ABLE TO IDENTIFY A DEBT LISTED THERE?

Since 1992, debt collectors who report to credit reporting agencies have been required to include the name of the creditor, so that the consumer can identify the source of the debt.

4. THE COLLECTION AGENCY SAID IT WOULD SUE ME. IS THAT TRUE?

Under normal circumstances, no. The most it can do is recommend to the creditor (the person to whom you owe the money) that the creditor bring a civil collection action. Most debt collectors are not lawyers, and could not sue you anyway, since the only one who can bring a court action is the creditor. However, some debt collectors are attorneys and are able to file litigation on behalf of their client creditors, while others are “debt buyers” that have actually purchased the debt.

5. CAN A COLLECTION AGENCY EMPLOYEE CALL MY NEIGHBORS OR MY BOSS AND TELL THEM ABOUT MY DEBT?

No. A debt collector may call those individuals only to find out where you live, or how to get in touch with you, but information about the money you owe can be told only to you, your spouse and any co-signors. If the debt collector already knows your address, these third party contacts may be illegal.

DID YOU KNOW:

In the “old days,” before enactment of the Fair Debt Collection laws, recovery of debts was often a down-and-dirty business. Many prohibitions in the law were enacted over the years because of debt collector practices such as:

- 1) Parking a “shame car,” prominently emblazoned with the name of a collection agency, outside a consumer’s house until the resulting embarrassment produced payment;
- 2) Leaving cards on consumers’ doors for all neighbors to see, stating “Jones Collection Agency stopped by to collect your overdue debt. Sorry to miss you”;
- 3) Communicating by postcard; or
- 4) Threatening to “send someone around” to collect the debt or do physical harm.

6. THE DEBT COLLECTOR TOLD ME THAT THE COMPANY REPRESENTED THE GOVERNMENT IN THIS MATTER AND THAT I MAY HAVE COMMITTED A CRIME. CAN A DEBT COLLECTOR DO THIS?

A debt collector may not make any **false** statements when collecting a debt. For example, debt collectors cannot:

- A. Falsely imply that they represent the United States government or any State or local agency or government.
- B. Falsely imply that they are attorneys.
- C. Falsely imply that you committed any crime.
- D. Falsely represent that they operate or work for credit bureaus.
- E. Misrepresent the amount of the debt.
- F. Represent that papers being sent are legal forms, such as court summonses, if they are not.

In addition, debt collectors may not:

- A. Give false credit information about you to anyone.
- B. Send you anything that looks like an official document that might be sent by any court or agency of the United States or any State or local government.
- C. Use any business, company or organization name other than the true name of the debt collector's business, company or organization.

7. ARE THERE OTHER LIMITATIONS ON WHAT A DEBT COLLECTOR OR COLLECTION AGENCY CAN DO?

Yes.

- A. **Time.** You cannot be called at unusual or inconvenient times, such as before 8:00 A.M. or after 9:00 P.M., unless you agree to be called at those times.
- B. **Language.** Debt collectors cannot use abusive language; cannot threaten to sue you unless they actually have that ability; and cannot misrepresent their authority. They cannot threaten to do you harm, or tell you that you will go to jail.
- C. **Place.** Debt collectors cannot call you repeatedly at work if they know your employer does not want you to be called there.
- D. **Legal Representation.** Collectors cannot contact you at all once they know that you are actively represented by an attorney.

8. IF I OWE MORE THAN ONE BILL, HOW DO I KNOW THE COLLECTION AGENCY WILL PUT MY PAYMENT ON THE RIGHT ONE?

If you owe several debts, any payment you make must be applied to the debts that you choose. Also, a debt collector cannot apply a payment to any debt you feel you don't owe.

9. CAN THE DEBT COLLECTOR ADD COSTS TO THE DEBT?

Under most circumstances, collection and legal costs cannot be added to the amount you owe. Only when such costs are allowed both by the contract and by state law can they be assessed.

10. CAN I STOP A DEBT COLLECTOR FROM CONTACTING ME?

Yes. The law provides that mailing a short letter should prevent a collector from calling or writing to you. Use the sample letter, reproduced below, to notify the debt collector:

[Your name]
[Your address]

[Date]

[ABC Collection Agency]
[Address]

Re: [Name of Creditor; Account Number]

Dear [ABC Collection Agency]:

I am hereby exercising my rights under the federal Fair Debt Collection Practices Act and I request that you cease all communications with me. I will deal with my creditor directly.

Sincerely,

[Your name]

The letter should be sent by certified mail to the debt collector, with a return receipt requested. Remember to keep a copy of the letter for yourself.

11. DOES THIS MEAN THE DEBT WILL DISAPPEAR?

No. The creditor may pursue other means, including hiring an attorney. However, you should not be contacted again by that collection agency, except to let you know that there will be no further contact from the debt collector. Also, the debt collector may notify you that some specific action may be taken, but only if the debt collector or the person to whom you owe money usually takes such action.

If you owe the money, we recommend that you contact the creditor, explain that you have told the debt collector to cease collection efforts, and attempt to work out a payment arrangement directly with the creditor.

12. I HAVE RECEIVED A COURT SUMMONS. WHAT DO I DO?

DO NOT IGNORE THE SUMMONS! Talk to your attorney, if you have one. The summons will give you a certain number of days to file a written paper with the court. Especially, if you have any questions about the debt (for example, if the debt isn't yours or if you don't owe as much as is stated in the complaint), bring or mail your written "answer" to the court, and require the creditor to prove the case against you. IF YOU DON'T RESPOND TO THE COURT IN WRITING, THE COURT WILL RULE AGAINST AND YOU WILL LOSE FOREVER YOUR RIGHT TO QUESTION THE DEBT.

13. CAN DEBT COLLECTORS ASK ME TO SEND THEM POST-DATED CHECKS?

Debt collectors may accept post-dated checks only if they notify you before depositing each check. In no case should a debt collector deposit any post-dated check before the date on that check. In our experience, however, it is fairly common (although illegal) for debt collectors to deposit check immediately when they receive them, regardless of when they are dated.

A debt collector must not act unfairly in attempting to collection any debt. For example, the debt collector cannot:

- A. Make you accept collect calls or pay for telegrams.
- B. Contact you by postcard.
- C. Put anything on an envelope other than the debt collector's name and address. The collector's name cannot be used if it shows that the letter inside relates to the collection of a debt.

COLLECTION AGENCY AND REPOSSESSION COMPANIES - LICENSING REQUIREMENTS

- 1) A license is necessary for each place of business.
- 2) Licenses expire after two years.
- 3) The application fee is \$400.
- 4) A surety bond is required based on type and volume of business.
- 5) The criminal record of any applicant will be considered.
- 6) No license may be granted to any lawyer whose license to practice law has been suspended or revoked, during the effective period of that suspension or revocation.
- 7) A change in collection agency ownership of more than twenty-five percent requires a new application.
- 8) Every application by An our-of-state business may contain:
 - (a) a certified copy of charter and bylaws; and
 - (b) a Power of Attorney appointing the Superintendent of the Bureau of Consumer Credit Protection to accept service of process in this State.
- 9) Licenses must be posted in a conspicuous place in the office where business is conducted.
- 10) Regulators must review and approve all form collection letters before they can be used with respect to Maine consumers.

14. ARE ATTORNEYS COVERED BY THE LAW?

Attorneys who are regularly engaged in the collection of debts are considered “debt collectors” under Maine and federal law. Complaints about harassment or unconscionable conduct by attorneys collecting debts can be directed to the Bureau of Consumer Credit Protection, or the Maine Board of Overseers of the Bar, Whitten Road, Augusta (mailing address: Post Office Box 1820, Augusta, ME 04332-1820).

15. IS A CHECK GUARANTEE COMPANY A DEBT COLLECTOR?

Many merchants subscribe to companies that offer to “guarantee” customers’ checks. If a check bounces, the check is sent to the “guarantee” company to be collected.

(continued)

The Federal Trade Commission has determined that check guarantee companies fall under the definition of debt collectors, and are regulated by the federal Fair Debt Collection Practices Act. Provisions of the Act prohibit the demand for additional funds above the face value of the check when attempting to collect on a defaulted check. However, it is possible that a court would allow added fees if consumers are notified by signs posted at the store.

16. DO ALL DEBT COLLECTORS NEED TO BE LICENSED?

No, only those collecting on debts originally incurred with Maine creditors. For example, if you formerly lived in Florida and incurred a debt there, the creditor may hire an unlicensed debt collector to dun you here in Maine.

17. IF A DEBT COLLECTOR OR COLLECTION AGENCY DOES BREAK THE LAW, HOW CAN THE BUREAU OF CONSUMER CREDIT PROTECTION HELP ME?

The Bureau advocates for consumers regarding both the State and federal Fair Debt Collection Practices Acts. In addition, the agency licenses all collection agencies that are located or serve clients in Maine. The Bureau has the power to review the records of those collectors, hold hearings, and even fine companies, or suspend or revoke their licenses for repeated or extreme violations of the law.

IF YOU THINK ANY DEBT COLLECTORS HAVE VIOLATED THE LAW, REPORT THEM TO THE BUREAU OF CONSUMER CREDIT PROTECTION. TO OBTAIN A COMPLAINT FORM, CALL TOLL FREE, 1-800-DEBT-LAW (1-800-332-8529), OR WRITE US AT:

BUREAU OF CONSUMER CREDIT PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0035

COLLECTION FORMS ARE ALSO AVAILABLE ON OUR WEBSITE:

www.credit.maine.gov

PART II - REPOSSESSION

1. HELP! MY CAR WAS JUST TOWED AWAY BY A REPO COMPANY. CAN THEY DO THAT?

Yes. Provided that they (and the creditor) have followed all the rules.

2. WHAT RULES?

First, if you have missed a regular payment, a written notice called a Notice of Right to Cure Default must have been mailed to you sometime within the past year. This would have given you 14 days to catch up on any back payments.

The Notice may not have actually been received by you; the creditor must only prove that this notice was sent. If the creditor does not have your current mailing address or if you refused to sign for any certified or registered mail, you may never receive a notice.

An example of a Notice of Right to Cure Default is reproduced below:

*[ABC Creditors]
[123 Main Street]*

[Account Number, if any]

[Date] is the LAST DAY FOR PAYMENT

[Amount] is the AMOUNT NOW DUE

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law.

If you are late again within the next 12 months in making your payments, we may exercise our right without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

If you get such a notice, **do not ignore it!** It is the only notice required before your vehicle can be repossessed.

Second, you must have either ignored the notice, made back payments but fallen behind in payments again within a year, or defaulted under some other provisions of your contract (for example, by failing to keep the vehicle insured).

Third, the repo company can repossess your car only if it can be done without entering your dwelling, and without a breach of the peace. If you confront a repo company employee attempting to repossess your car and order the employee off your property, the repossession should stop, according to the law. (The Bureau of Consumer Credit Protection recommends avoiding physical confrontations, however. If the repo company employee refuses to cease efforts and leave, report the actions to the police, your attorney and the Bureau of Consumer Credit Protection).

RULES OF CONDUCT FOR REPOSSESSIONS AND SALES OF COLLATERAL

1. Repossessions must be done without breach of the peace.
2. After repossession, “reasonable notice” must be sent by the creditor to the consumer of the time and place of any public sale, or of a time after which the collateral will be sold at private sale.
3. At any time before disposition (sale) of collateral, consumer can “redeem” goods by paying balance on loan and the reasonable expenses incurred by the creditor.
4. Creditor must sell within 90 days if 60% or more of the cash price or of the loan amount has been paid. If less than 60% has been paid, then the creditor can propose in writing to keep the collateral, and the consumer can object or consent. If a consumer objects, the consumer can force a sale.
5. The sale must be conducted in a “commercially reasonable” manner. A low price is an indication, but not proof, of unreasonableness.

6. Money received upon resale can be first applied to pay reasonable costs of repossession, storage, preparing for sale and selling, then to the debt.

7. If the sale brings more than the debt plus expenses, the balance (surplus) must be returned to the consumer. If, as is more common, the proceeds do not pay off the debt, the consumer is liable for the "deficiency balance."

3. MY CAR WAS LEGALLY REPOSSESSED. WHAT HAPPENS TO ALL MY PERSONAL BELONGINGS IN THE VEHICLE?

The repossession company or the creditor must notify you of a place where your items can be retrieved.

4. CAN I GET MY CAR STEREO BACK?

Probably not. Items that are attached to the vehicle (stereo, speakers, roof rack) can be legally retained. Items that can be removed without making any holes (books, tapes, tool box, fuzzy dice) must be made available to you for pick-up.

5. WHAT HAPPENS AFTER THE CAR IS REPOSSESSED?

You have the right to redeem it by paying the full balance plus all reasonable repossession costs.

If you do not do so, the creditor may sell the car at an auction or by private sealed bid sale, as long as the auction or sale is conducted in a "commercially reasonable" manner. If the sale price plus reasonable expenses is less than the amount of your debt, you will still owe the difference, known as the "deficiency balance." If the car sells for more than the debt plus costs of the repossession and sale, then you are entitled to have that "surplus" refunded to you. The less equity that you have in your vehicle, the less likely that a surplus will exist.

NOTE: The Maine Consumer Credit Code provides an exception to this rule. If your creditor takes back the collateral and the amount financed is \$2,800 or less, you are not liable to the creditor for any unpaid deficiency balance on the debt.

6. IS A DEALER-ONLY AUCTION COMMERCIALY REASONABLE?

Most court decisions from other states have upheld dealer only auctions as reasonable, but each case should be looked at on its own facts.

7. I STILL HAVE MY CAR, BUT I AM WAY BEHIND ON MY PAYMENTS. MY CREDITOR WANTS ME TO BRING THE CAR BACK. IS THIS STILL A REPOSSESSION?

Yes. It will still be listed as a “repossession” on your credit report. In addition, don’t think that you will not owe any money if you simply bring the car back. It will still be sold at auction or private sale, and you will still owe any “deficiency balance.” This often amounts to **thousands** of dollars. The only advantage to a “voluntary” repossession is that you cannot be assessed the costs of locating and repossessing your vehicle.

If you think your creditor is offering to “call it even” if you bring the car back, then get the agreement in writing.

IF YOU FEEL THAT A REPOSSESSION COMPANY HAS VIOLATED THE LAW, REPORT THEM TO THE BUREAU OF CONSUMER CREDIT PROTECTION. TO OBTAIN A COMPLAINT FORM, CALL US TOLL FREE, 1-800-DEBT-LAW (1-800-332-8529), OR WRITE US AT:

BUREAU OF CONSUMER CREDIT PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0035

THE COMPLAINT FORM IS ALSO AVAIBLE ON OUR WEBSITE: www.credit.maine.gov

Debtor’s Bill of Rights

You have the right:

- **To request and receive verification (proof) of any debt**
- **Not to be abused or harassed**
- **Not to deal with a debt collector, if you make that request in writing**
- **To cure a default (to bring your credit account current) at least once**
- **Not to be subject to any use of force or breach of peace**

These other credit-related booklets are available from the :

Downeaster’s Pocket Credit Guide -- credit shopping advice and extensive rate tables useful for furniture and appliance financing, home improvement loans and mortgage loans.

Downeaster's Consumer Guide to Cut-Rate Auto Financing -- Shopping for a new or used car is made easier with this guide to dealer mark-ups, rebates, financing, interest rates, and credit insurance. Includes helpful rate tables.

Downeaster Consumer Guide to Credit Bureaus and Credit Reports -- answers the twenty most commonly-asked questions about Maine's Fair Credit Reporting Act.

Price: Free to Maine residents - \$1.50 each to all others.

Mail orders to:

**Bureau of Consumer Credit Protection
35 State House Station
Augusta, Maine 04333-0035**

**(207)624-8527
1-800-DEBT LAW
(1-800-332-8529) (Consumers only)**