

Debt Collection Guide

Update

This Update includes new information you should know when dealing with debt collectors.

1. In New York, a debt collector cannot collect or attempt to collect on a payday loan.

Payday loans are illegal in New York. A payday loan is a high-interest loan borrowed against your next paycheck. To apply for a payday loan, you need to have a checking account and proof of income. In New York State, most payday loans are handled by phone or online. If a collection agency tries to collect on a payday loan, visit nyc.gov/dca or contact 311 to file a complaint with DCA.

2. Beware of debt collection companies or companies working with debt collection companies that offer you a credit card if you repay, in part or in full, an old debt that may have expired.

Companies may use terms like “Fresh Start Program” or “Balance Transfer Program” to describe offers to transfer your old debt to a new credit card account after you make a certain number of payments. *If you accept the credit card offer and start making payments, the debt collection agency’s time limit (statute of limitations) for suing you to collect this debt will restart.* The company offering the credit card may not tell you that this is a consequence of getting the credit card. See the section **What Should You Do When a Debt Collection Agency Contacts You?** for information about statute of limitations.

3. It is illegal for a debt collection agency to use “caller ID spoofing.”

Some debt collection agencies are using spoofed (or faked) phone numbers to disguise their identities on caller ID. For example, a debt collector may use the number of a relative or government agency to get you to answer the phone. If you get a “spoofed” call from a debt collection agency, visit nyc.gov/dca or contact 311 to file a complaint with DCA.

For the most up-to-date information, please monitor nyc.gov/dca and search “debt collectors.”

Introduction

The New York City Consumer Protection Law provides the strongest anti-harassment protection in the country when it comes to debt collection. With passage of Local Law 15 of 2009, City residents gained even greater protections when contacted by debt collectors. The new law also expanded the licensing and regulatory authority of the Department of Consumer Affairs (DCA) to include “debt buyers,” businesses that buy overdue debt, and then try to collect money sometimes by taking consumers to court.

In recent years, debt collection has been the #1 complaint category for DCA. Although DCA can mediate many of the complaints we receive, we cannot mediate issues that involve money judgments and frozen bank accounts. Please see the box marked **Important Information about Money that Cannot Be Taken to Pay Judgments** later in this guide.

DCA updated this guide to include important new information about your rights and debt collectors’ responsibilities when they seek to collect money. Knowing your rights is your greatest protection. Make sure debt collectors know that you know your rights.

Licensing Law

All debt collection agencies that seek to collect personal or household debts from New York City residents must have a DCA license no matter where the agency is located. Creditors often use debt collection agencies to help them collect overdue debts. A “creditor” is the individual or business that provided the original service or credit for which you owe money. For example, credit card companies and cellular phone companies are creditors. Sometimes, creditors sell your debt to a third party called a debt buyer. No matter if the debt collection agency is working for a creditor or for itself as the debt buyer, it must have a DCA license and follow all laws or risk fines, penalties, or the suspension or loss of its license.

NOTE: Debt collectors that collect child support payments must be licensed and comply with special requirements. To learn requirements for a Debt Collection Agency license, visit DCA online at nyc.gov/dca.

Exceptions to the Licensing Law

The law does not apply to debt collection activities performed by:	For information or to file a complaint about these activities, contact:
Creditors	A manager or supervisor at the relevant organization
Government employees collecting in their official capacities	The relevant government agency
Nonprofit credit counseling organizations	New York State Banking Department: 1-877-226-5697
Public utilities regulated by the Public Service Commission	New York State Public Service Commission: 1-800-342-3355 Note: The New York State Public Service Commission does not accept Long Island Power Authority (LIPA) complaints.

What Should You Do When a Debt Collection Agency Contacts You?

When a debt collector contacts you the first time, it is usually in the form of a **dunning letter** (collection letter) or a phone call. Never ignore a debt collector, even if you do not recognize the debt. DCA offers a checklist to help you protect your rights:

- Check that the debt collection agency is licensed.** Debt collection agencies must include their DCA license number in all letters sent to you. To verify if a debt collection agency is licensed, call 311 (212-NEW-YORK outside NYC) or search DCA's Instant License Check, available online at nyc.gov/dca.
- Check that the debt collection agency provided required information.** By law, debt collection agencies must provide the following information in all communications to you:
 - the name of the debt collection agency
 - the name of the original creditor
 - the amount of the debt
 - a call-back number to a phone that is answered by a live person and the name of that person. If your call is routed from the agency's main telephone line, the live person qualified to handle your questions must answer the call within 60 seconds.

- Make sure the debt collector sends you validation of the debt especially if the first collection attempt is by phone.**

Validation must include:

- the name of the original creditor
- the amount of the debt
- information about your right to dispute the debt

The debt collection agency must send you validation within five (5) days of contacting you.

- Always request that the debt collector send you written verification of the original debt even if you recognize the debt.**

Verification must include:

- a document from the original creditor that shows you made the purchase and owe the debt
- a copy of the final account statement from the original creditor AND a document that lists:
 - » the total principal amount you owe (The principal may be either the original amount borrowed OR the part of the amount borrowed that remains unpaid minus any charges or fees.)
 - » each additional charge or fee you owe that separately lists:
 - * the total for each charge or fee and the date each was incurred
 - * description of why you must pay the additional charge or fee

Once you request verification, a debt collection agency may not contact you to collect the debt until it sends you verification. Do not be pressured into making any payments until you have received verification of the original debt.

- Confirm if you owe the debt.** Who is the original creditor? Do you remember buying a product or service from this business? Is the amount of the debt correct? Checking your credit report can help. See the box **Think You're the Victim of Identity Theft?** later in this guide.

- Check how old the debt is.** If the **statute of limitations** on the debt is expired, the collector must disclose this information to you, along with information about your legal rights. The statute of limitations is the period of time that a creditor or collector can sue you in court to collect the debt.

If the statute of limitations expired, by law, the collector must include in the collection letter the following statement in at least 12 point type and in a color different from other text:

“WE ARE REQUIRED BY LAW TO GIVE YOU THE FOLLOWING INFORMATION ABOUT THIS DEBT. The legal time limit (statute of limitations) for suing you to collect this debt has expired. However, if somebody sues you anyway to try to make you pay this debt, court rules REQUIRE YOU to tell the court that the statute of limitations has expired to prevent the creditor from obtaining a judgment. Even though the statute of limitations has expired, you may CHOOSE to make payments. However, BE AWARE: if you make a payment, the creditor’s right to sue you to make you pay the entire debt may START AGAIN.”

The statute of limitations is generally six years on credit card debt. You may wish to speak with an attorney if you have questions or concerns about the statute of limitations.

- If you have hired an attorney**, write to the debt collection agency with your attorney’s name and contact information. Once the debt collection agency knows you have an attorney, the agency may not contact you directly, but must deal with your attorney only.
- Keep a copy—front and back—of every letter you get from or send to the debt collection agency.** You should also take notes on any telephone conversations you have with debt collectors, including the date, name of the person you speak to, and details of the call.
- Beware of sharing with the debt collection agency information such as your e-mail address or cell phone number—the collector will use it. Also beware of sharing your Social Security Number.

False Claims and Harassment Are Illegal.

A debt collection agency may not make false statements, including:

- claim that it represents a government agency, such as a marshal, sheriff, or District Attorney’s Office
- threaten that you will be arrested
- threaten that it will report you to immigration authorities
- claim that you have committed a crime
- threaten that it will have you evicted, take or garnish your wages, take the money from your bank account, or take your personal belongings without first obtaining a judgment against you in court

A debt collection agency may not:

- engage in acts of violence, threats of violence, or obscene language
- claim the debt owed is greater than it is
- claim you owe the debt when you do not

- claim you can be sued if the statute of limitations expired
- call you before 8 AM or after 9 PM or more than twice a week if the collector has made contact with you
- advertise a debt or reveal it to anyone, including family members and neighbors
- contact your employer, family, friends, and neighbors for any reason other than to locate you. *Collectors cannot discuss the alleged debt with anyone other than you.*

If a debt collection agency is unlicensed, fails to give you information required by law, or unlawfully threatens or harasses you, call 311 or visit nyc.gov/dca to file a complaint with DCA. Remember to keep notes of phone calls, including the date, time, and name of the person who called you, and to send DCA all documentation that supports your complaint.

Disputing the Debt: What to do if a debt collection agency sends you information about the original debt that is wrong

Write the debt collection agency within 30 days of receiving validation—phone calls are not enough—to confirm that its information on the debt is wrong. For example, alert the collector that the amount owed is wrong because it doesn't include payments you've made. Include with your letter copies of any proof that the collector's information is wrong.

You can also stop the collector from contacting you during the time you dispute the debt by writing a cease collection letter. Simply write:

I am disputing this debt. Please cease all further communication in regard to this matter. If you have already reported this debt to the credit reporting agencies, please contact them to report that this debt is disputed and ask them to delete this debt from my credit report. Any further communication beyond what is legally allowed will be a violation of the law.

In your cease collection letter you should mention any abusive tactics that the collector's employees have used with you.

Send your cease collection letter to the collection agency and to the original creditor via certified mail, return receipt requested, along with copies of any documents that support your dispute. Keep a copy of the letter for your records.

After receiving a cease collection letter, a collection agency is only authorized to contact you under limited circumstances, such as to inform you of any legal action the agency intends to take or to respond to any other communications from you. **Note that a collection agency may sue you after receiving your cease collection letter.**

If a debt collection agency continues to communicate with you or harass you after you send a cease collection letter, tell the agency it is violating the law and call 311 or visit nyc.gov/dca to file a complaint with DCA. You may also be able to take legal action against a collector that persists in trying to collect money. For any legal case, remember to document your contact with the collector.

Think You're the Victim of Identity Theft?

If a debt collector contacts you about debt you do not believe you owe, follow these steps:

1. Check your credit report. You are entitled to one free credit report each year from the three major credit reporting agencies. To get your free credit reports, visit www.annualcreditreport.com or call 1-877-322-8228. For identity theft prevention tips, visit nyc.gov/dca or call 311.
2. File a police report at your local precinct.
3. Dispute the debt in writing (as described above) within 30 days and send a copy of your police report and a copy of a completed Federal Trade Commission (FTC) ID Theft Affidavit (available online at www.ftc.gov/idtheft) to the debt collection agency. The collection agency must review your documentation and send you a written decision stating whether or not the agency believes you do not owe the debt. Until the debt collection agency formally determines that it believes you still owe the debt, it must stop trying to collect the debt from you.

Note:

By law, if a debt collection agency determines that your claim of identity theft is valid, it must:

- Tell the credit reporting agencies to delete the debt from your credit report (*if the collection agency reported the debt*).
- Notify the original creditor that it stopped collection attempts based on your report of identity theft.

Find Something Wrong on Your Credit Report?

Under the Federal Fair Credit Reporting Act, you have the right to dispute wrong information on your credit report. Follow this checklist:

- Write to the credit reporting agency. Include your name, address, date of birth, and Social Security Number so the agency can identify you.
- Identify the specific debt you are disputing, explain in detail why the information is wrong, and request that the debt be changed or removed. Include copies of any documentation that supports your position.
- Send your dispute letter certified mail, return receipt requested. Send a copy of the letter to the source of the credit reporting agency's information—this may be a debt collection agency or the original creditor and should be listed on your credit report. Keep copies of the letters you send.

In most cases, the credit reporting agency is required to investigate your dispute and give you the results in writing, as well as a free copy of your updated credit report.

For more information on disputing items in your credit report, visit the FTC online at www.ftc.gov.

Paying the Debt: If the debt is valid

Review your finances and figure out your ability to repay the debt. Remember that failure to pay off debts can lead to a poor credit history and make it difficult to get credit.

If you cannot pay off the debt right away, be honest with the debt collector. You may be able to negotiate a lower amount. There is also a good chance the debt collector will work out a payment plan with you.

Tips when negotiating with creditors and debt collection agencies

As with any negotiation it is important to be prepared. DCA offers the following checklists to help with your preparations.

Before the negotiation:

- Know what you want from the negotiation so you can stick to your goal.

- Gather all important documents.
- Know your rights and responsibilities under the law.
- Get additional help (e.g., support person, counselor, lawyer, interpreter) for the negotiation.

During the negotiation:

- Listen.
- Ask questions that cannot be answered with a simple “Yes” or “No.”
By asking questions in this way you will have a true discussion.
- Do not be afraid to end the negotiation if you feel pressured into agreeing to something that doesn’t seem right to you.
- Get your agreement with the creditor or debt collection agency in writing.

Additional Dos and Don’ts:

- Be honest. Do not tell the debt collector that you can pay off the debt when you cannot, or that you cannot pay the debt when you actually can.
- Pay your “secured” debts first. Secured debt is debt backed by property, such as a house or car. However, do not ignore your other unsecured debts. Make every effort to pay them off as soon as possible.
- Do not let a debt collector persuade you to borrow money from a friend or family member to pay off a debt. Never let a debt collector talk you into getting further into debt.

If you reach a settlement agreement or decide on a payment plan with a debt collection agency, **by law, the debt collection agency must send you written confirmation of the agreement or plan within five (5) business days.** Written confirmation must:

- name the original creditor
- name the debt collection agency
- name the employee who negotiated the settlement agreement or payment plan OR the employee’s supervisor
- include your name and address
- identify the date when the settlement agreement or payment plan was made
- list the specific amount and due date of each payment
- identify the address where payments should be mailed or otherwise sent
- specify any other terms and conditions

If you owe debt to multiple creditors, the debt collection agency must list separately:

- the debt due to each original creditor
- the amount to be paid on each debt
- how payments will be applied

Make sure the written confirmation includes only the terms to which you agreed. Keep the written confirmation for your records.

Within 21 calendar days of receiving your final payment under the settlement agreement or payment plan, the debt collection agency must confirm in writing that the debt is paid in full and identify both the original creditor and account number.

If you do not receive written confirmation from the debt collection agency or if the correspondence does not reflect what you believe you agreed to, notify the debt collection agency immediately. You can also call 311 or visit nyc.gov/dca to file a complaint with DCA.

Declaring Bankruptcy

You have a legal right to declare bankruptcy, but should seriously think about it and explore other options first. Under the law, if you are considering declaring bankruptcy, you must attend bankruptcy counseling with a qualified professional to learn about all of your options. To find an approved bankruptcy counselor, contact the U.S. Department of Justice, U.S. Trustee Program at 1-202-514-4100 or get Credit Counseling & Debtor Education Information online at www.usdoj.gov/ust/eo/bapcpa/ccde.

How to Take Control of Your Debt

Debt stress? You're not alone. DCA's Office of Financial Empowerment (OFE) can help you take control.

Call 311 (212-NEW-YORK outside NYC) or visit nyc.gov/ofe to find a Financial Empowerment Center near you. Financial Empowerment Centers provide free one-on-one financial counseling by professional counselors, in English and Spanish, in person or by phone. You can also get referrals to organizations in the City's Financial Education Network that offer free and low-cost financial education classes, workshops, and one-on-one counseling services throughout New York. Online, you can search a directory of the Financial Education Network by topic, borough, language, and provider. The OFE Web site also provides extensive resources to help you get, manage, save, and protect your money.

Beware of Debt Help Scams

Many companies send offers to help you solve all of your debt problems quickly for a low fee.

Sounds like a good offer, right?

WRONG. Unfortunately, if an offer seems too good to be true, it usually is. Many of the companies promising to help you with your debt problems will actually cause more grief in the long run. Learn how to spot the signs of a scam.

Signs a “debt help” company is trying to “scam” you:

It promises to remove all of your debt. Debt does not disappear unless you pay it off. Any company that says it can get rid of your debt is trying to rip you off.

It encourages you to take out a new loan without reviewing your financial situation. Any qualified lender will need to evaluate your ability to repay a loan before it offers you money.

It requests substantial monthly service fees. If you’re already struggling with debt payments, you should not add to your expenses by paying someone to manage debt that you can repay yourself or in consultation with a free or low-cost credit counselor.

It tells you to stop making payments or contacting your lenders. Often, lenders are willing to work out a repayment plan with you. If the company tells you not to contact lenders, it might be withholding valuable information. If you stop making payments, you may damage your credit and lessen your lender’s willingness to negotiate.

It asks you to sign blank forms or sign over your property’s ownership. NEVER sign blank paperwork. NEVER sign agreements that you don’t understand. Remember: If the company is unwilling to explain the paperwork or answer your questions, do not do business with them.

If a Debt Collector Sues You

Do not ignore a court summons. Consult an attorney, or if you cannot afford one, go to the court clerk and answer the summons yourself. If you ignore the summons, the creditor can obtain a court decision—called a default judgment—ordering you to pay money which may include fees and interest charges in addition to the debt itself. If a creditor has a judgment against you, that creditor may be able to take money from your wages to pay the debt. The box **New York City Civil Courts** (below) includes important information.

New York City Civil Courts

Locations and Hours: 1-646-386-5700

Obtain helpful information in person at the courthouse or on the Web: www.courts.state.ny.us/courts/nyc/civil/index.shtml

Represent yourself in court:

www.courts.state.ny.us/courts/nyc/civil/represent.shtml

Find legal assistance:

www.nycourts.gov/courts/nyc/civil/legalassistance.shtml

Important Information about Money that Cannot Be Taken to Pay Judgments

Under State and Federal law, certain money **may never** be taken by creditors to satisfy judgments. This money is considered “exempt funds.” You may choose to use exempt funds to pay a debt you owe, but a creditor cannot freeze or forcibly take those funds from you or your bank account to pay off a debt.

Exempt funds Include:

- Supplemental Security Income (SSI)
- Social Security retirement
- Social Security Disability (SSD)
- Public assistance (Temporary Assistance for Needy Families, TANF)
- Income earned while receiving SSI or public assistance
- Disability benefits
- Workers’ compensation benefits

- Veterans' benefits
- Black lung benefits
- Spousal support, maintenance (alimony), or child support
- Railroad retirement
- Unemployment benefits

Note:

Under the Exempt Income Protection Act of 2008, your bank may never take or freeze the first \$2,640 in your bank or credit union account to pay a judgment, whether or not your account has exempt funds.

For more information about exempt funds and where to turn when you need assistance, visit nyc.gov/dca and download *Debt Collection: Money Judgments and Frozen Bank Accounts, Information for Consumers*.

How to Resolve Complaints

If you reside in one of New York City's five boroughs, or if you were a City resident at the time you were contacted by a debt collection agency, you can file a complaint against the debt collection agency with DCA. To file a complaint with DCA, call 311 or visit nyc.gov/dca.

If you reside outside of New York City, you can file a complaint with your local consumer protection agency and/or the FTC. To file a Federal complaint or for free information from the FTC on consumer issues, call 1-877-FTC-HELP (1-877-382-4357) toll-free or visit www.ftc.gov.



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Commissioner

The NYC Department of Consumer Affairs (DCA) protects and enhances the daily economic lives of New Yorkers to create thriving communities. For additional information about the Department, visit nyc.gov/dca

If you have a consumer-related complaint, call DCA at 311 or (212) NEW-YORK.

New York City employees are not allowed to ask for or accept anything of value, such as money, gifts, or tips for doing their job. To report corruption, contact the New York City Department of Investigation at www.nyc.gov/doi



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