



# LEGAL BRIEF

## RESOLVING CREDIT PROBLEMS

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*If the problems you are experiencing with your credit are because you were a victim of Identity Theft, please make sure you pick up our "Identity Theft" guide. You may also want to review our "Consumer Protection" handout.*

### **CREDIT AND YOUR CONSUMER RIGHTS**

A good credit rating is very important. Businesses inspect your credit history when they evaluate your applications for credit, insurance, employment, and even leases. Based on your credit payment history, businesses can choose to grant or deny you credit provided you receive fair and equal treatment. Sometimes, things happen that can cause credit problems: a temporary loss of income, an illness, even a computer error. Solving credit problems may take time and patience, but it doesn't have to be an ordeal.

The Federal Trade Commission (FTC) enforces credit laws that protect your right to obtain, use, and maintain credit. These laws do not guarantee that everyone will receive credit. Instead, the credit laws protect your rights by requiring businesses to give all consumers a fair and equal opportunity to receive credit and to resolve disputes over credit errors. This brochure explains your rights under these laws and offers practical tips to help you solve credit problems.

### **YOUR CREDIT REPORT**

Your credit payment history is recorded in a file or report. These files are maintained and sold by "consumer reporting agencies" (CRAs). One type of CRA is commonly known as a credit bureau. You have a credit record on file at a credit bureau if you have ever applied for a credit or charge account, a personal loan, insurance, or a job. Your credit record contains information about your income, debts, and credit payment history. It also indicates whether you have been sued, arrested, or have filed for bankruptcy.

**THE FAIR CREDIT REPORTING ACT (FCRA)** is designed to help ensure that CRAs furnish correct and complete information to businesses to use when evaluating your application.

#### **Your rights under the Fair Credit Reporting Act:**

- You have the right to receive a copy of your credit report. The copy of your report must contain all of the information in your file at the time of your request.

- You have the right to know the name of anyone who received your credit report in the last year for most purposes or in the last two years for employment purposes.
- Any company that denies your application must supply the name and address of the CRA they contacted, provided the denial was based on information given by the CRA.
- You have the right to a free copy of your credit report when your application is denied because of information supplied by the CRA. Your request must be made within 60 days of receiving your denial notice.
- If you contest the completeness or accuracy of information in your report, you should file a dispute with the CRA and with the company that furnished the information to the CRA. Both the CRA and the furnisher of information are legally obligated to reinvestigate your dispute.

You have a right to add a summary explanation to your credit report if your dispute is not resolved to your satisfaction.

## **YOUR CREDIT APPLICATION**

When creditors evaluate a credit application, they cannot lawfully engage in discriminatory practices.

**THE EQUAL CREDIT OPPORTUNITY ACT (ECOA)** prohibits credit discrimination on the basis of sex, race, color, marital status, religion, national origin, age, or receipt of public assistance. Creditors may ask for this information (except religion) in certain situations but may not use it to discriminate when deciding whether to grant you credit.

The ECOA protects consumers who deal with companies that regularly extend credit, including banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions. Everyone who participates in the decision to grant credit, including real estate brokers who arrange financing, must follow this law. Businesses applying for credit also are protected by this law.

### **Your rights under the Equal Credit Opportunity Act:**

- You cannot be denied credit based on your race, color, sex, marital status, religion, age, national origin, or receipt of public assistance.
- You have the right to have reliable public assistance considered in the same manner as other income.
- If you are denied credit, you have a legal right to know why.

## **YOUR CREDIT BILLING AND ELECTRONIC FUND TRANSFER STATEMENTS**

It is important to check credit billing and electronic fund transfer account statements regularly. These documents may contain mistakes that could damage your credit status or reflect improper charges or transfers. If you find an error or discrepancy, notify the company and contest the error immediately. **The Fair Credit Billing Act (FCBA)** and **Electronic Fund Transfer Act (EFTA)**

establish procedures for resolving mistakes on credit billing and electronic fund transfer account statements, including:

- charges or electronic fund transfers that you — or anyone you have authorized to use your account — have not made;
- charges or electronic fund transfers that are incorrectly identified or show the wrong amount or date;
- computation or similar errors;
- failure to reflect payments, credits, or electronic fund transfers properly;
- not mailing or delivering credit billing statements to your current address, as long as that address was received by the creditor in writing at least 20 days before the billing period ended;
- charges or electronic fund transfers for which you request an explanation or documentation, due to a possible error.

The FCBA generally applies only to "open end" credit accounts — credit cards, revolving charge accounts (such as department store accounts), and overdraft checking accounts. It does not apply to loans or credit sales that are paid according to a fixed schedule until the entire amount is paid back, such as an automobile loan. The EFTA applies to electronic fund transfers, such as those involving automatic teller machines (ATMs), point-of-sale debit transactions, and other electronic banking transactions.

## **YOUR DEBTS AND DEBT COLLECTORS**

You are responsible for your debts. If you fall behind in paying your creditors or an error is made on your account, you may be contacted by a "debt collector." A debt collector is any person, other than the creditor, who regularly collects debts owed to others. This includes lawyers who collect debts on a regular basis. You have the right to be treated fairly by debt collectors.

**THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)** applies to personal, family, and household debts. This includes money owed for the purchase of a car, for medical care, or for charge accounts. The FDCPA prohibits debt collectors from engaging in unfair, deceptive, or abusive practices while collecting these debts.

### **Your rights under the Fair Debt Collection Practices Act:**

- Debt collectors may contact you only between 8 a.m. and 9 p.m.
- Debt collectors may not contact you at work if they know your employer disapproves.
- Debt collectors may not harass, oppress, or abuse you.
- Debt collectors may not lie when collecting debts, such as falsely implying that you have committed a crime.
- Debt collectors must identify themselves to you on the phone.
- Debt collectors must stop contacting you if you ask them to in writing. They may, however, continue to contact you: to advise you that the debt collector's further efforts are being terminated; to notify you that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or where applicable, to notify

you that the debt collector or creditor intends to invoke a specified remedy.

## **SOLVING YOUR CREDIT PROBLEMS**

Your credit report influences your purchasing power, as well as your chances to get a job, rent or buy an apartment or a house, and buy insurance. A history of timely credit payments helps you get additional credit. Accurate negative information can stay on your report for seven years. A bankruptcy can stay on your report for ten years. If you are having problems paying your bills, contact your creditors at once. Try to work out a modified payment plan with them that reduces your payments to a more manageable level. Don't wait until your account has been turned over to a debt collector.

### **Here are some additional tips for solving credit problems:**

- If you want to contest a credit report, bill or credit denial, contact the appropriate company in writing and send it "return receipt requested."
- When you contest a billing error, include your name, account number, the dollar amount in question, and the reason you believe the bill is wrong.
- If in doubt, request written verification of a debt.
- Keep all your original documents, especially receipts, sales slips, and billing statements. You will need them if you dispute a credit bill or report. Send copies only. It may take more than one letter to correct problems.
- Be skeptical of businesses that offer instant solutions to credit problems.
- Be persistent. Resolving credit problems can take time and effort.
- There is nothing that a credit repair company can do for you — for a fee — that you cannot do for yourself for little or no cost.

If you can't resolve your credit problems yourself or if you need help, you may want to contact a credit counseling service. Nonprofit organizations in every state counsel consumers in debt. Counselors try to arrange repayment plans that are acceptable to you and your creditors. They also can help you set up a realistic budget. These services usually are offered at little or no cost. Universities, military bases, credit unions, and housing authorities also may offer low- or no-cost credit counseling programs. Check the white pages of your telephone directory for a service near you.

## **LOST AND STOLEN DEBIT/CHECK CARDS AND STORED-VALUE CARDS**

Report a lost or stolen ATM or debit/check card to the issuer immediately.

- If you report an ATM/Debit card missing before it's used without your permission, you are not responsible for any unauthorized withdrawals. If you report the loss within two business days after you realize your card is missing, federal regulations limit your liability to \$50. Your liability is limited to \$500 if you report the loss between 2 days after you realize your card is missing and 60 days after you receive your statement. If it has been longer than 60 days since you received your statement with fraudulent charges, you may be liable for all amounts taken.

- If you report a credit card as missing before it's used without your permission, you are not liable for any charges. Your liability is limited to \$50 if it is used before you report it missing. If only your credit card number (and not the card itself) is stolen, you are not responsible for any unauthorized use.

Stored-value cards contain cash value stored electronically on the card itself. Stored-value cards and the transactions you make using them may not be covered by the Electronic Funds Transfer Act. This means you may not be covered for loss or misuse of the card.

## **CREDIT BILLING DISPUTES**

The Fair Credit Billing Act applies to problems with credit card and charge accounts and overdraft checking such as:

- Billing errors;
- Unauthorized use of your account;
- Goods or services charged to your account but not received or not provided as promised; and
- Charges for which you request an explanation or written proof of purchase.

To dispute an amount, request proof of purchase, or complain regarding goods or services received:

- Write to the creditor or card issuer within 60 days after the first bill containing the disputed charge is mailed to you. (Even if more than 60 days have passed since you were billed for the item, you still may be able to dispute the charge if you only recently found out about the problem.)
- Send your letter to the address provided on the bill. Do not send the letter with your payment.
- Be specific. In your letter, give your name and account number, the date and amount of the charge disputed, and a complete explanation of why you are disputing the charge. Send your letter by certified mail, with a return receipt requested, if you want to be sure it's received.

If you follow these requirements, the creditor or card issuer must acknowledge your letter in writing within 30 days after it is received and conduct an investigation within 90 days.

While the bill is being investigated, you need not pay the amount in dispute. The creditor or card issuer may not take action to collect the disputed amount, including reporting the amount as delinquent, and may not close or restrict your account.

If there was an error, the creditor or card issuer must credit your account and remove any finance charges or late fees relating to the amount not owed. For any amount still owed, you have the right to an explanation and copies of documents proving you owe the money.

If the bill is correct, you must be told in writing what you owe and why. You will owe the amount disputed plus any finance charges.

## **OUT OF CONTROL DEBT**

Counseling services provide assistance to persons having difficulty budgeting money and paying bills. Credit unions, cooperative extension offices, military family service centers and religious organizations are among those that may offer free or low-cost credit counseling.

Members of the National Foundation for Credit Counseling (NFCC) provide educational programs on money management and help in developing debt payment plans. These locally managed, nonprofit agencies operate under the name Consumer Credit Counseling Service (CCCS). To locate the nearest NFCC member, call toll-free, 24 hours a day, 1-800-388-2227 or visit [www.nfcc.org](http://www.nfcc.org).

The National Association of Consumer Advocates has a tremendous amount of free information available to consumers on their website at [www.naca.net](http://www.naca.net).

## **NEGATIVE CREDIT INFORMATION IN YOUR CREDIT REPORT**

If there is inaccurate or incomplete information in your credit report:

- Contact both the credit reporting agency (CRA) and the company that provided the information to the CRA.
- Tell the CRA in writing what information you believe is inaccurate.

Under The Fair Credit Reporting Act, the information provider is required to investigate and report the results to the CRA. If the information is found to be incorrect, it must notify all nationwide CRAs to also correct your file. If the investigation does not solve your dispute, ask that your statement of the dispute be included in your file. A notice of your dispute must be included anytime the CRA reports the item. See *Your Rights: Credit Reports*.

If the information is accurate, only time, hard work, and a personal debt repayment plan will improve your credit report. Credit repair companies advertise that they can erase bad credit for a hefty fee. Don't believe it.

Under the Credit Repair Organizations Act, credit repair companies can't require you to pay until they have completed promised services. They must also give you:

- A copy of the "Consumer Credit File Rights Under State and Federal Law" before you sign a contract;
- A written contract that spells out your rights and obligations; and
- Three days to cancel without paying any fees.

Some credit repair companies promise to help you establish a whole new credit identity. You can be prosecuted for fraud if you use the mail or telephone to apply for credit with false information. It is a federal crime to make false statements on a loan or credit application, to misrepresent your social security number, or to obtain an Employer Identification Number from the Internal Revenue Service under false pretences.

Your state may also regulate credit repair companies. If you have lost money to credit repair scams, contact your state or local consumer affairs office or the National Fraud Information Center.

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