

# FDCPA Basics That Every Attorney Should Know

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*The Durham Bar  
2020 CLE Program*



*Craig Shapiro  
Koury Hicks*



*Law Offices of  
John T. Orcutt, P.C.*



*Durham, North Carolina*



*919.286.1695*



*cshapiro@johnorcutt.com  
khicks@johnorcutt.com*

# The Basic Law



Fair Debt Collection Practices Act - FDCPA



Enacted in 1977



Levels the playing field for consumers with debt collectors



Prohibits debt collectors from using harassing, oppressing, abusive, invasive, and deceptive collection practices in collecting consumer debts



One (1) year statute of limitations

# Four Reasons for Enactment of the FDPCA

*Jobs:* Loss of Employment

*Marriage:* Marital Instability and Divorce

*Bankruptcy:* Increase in Unnecessary Filings

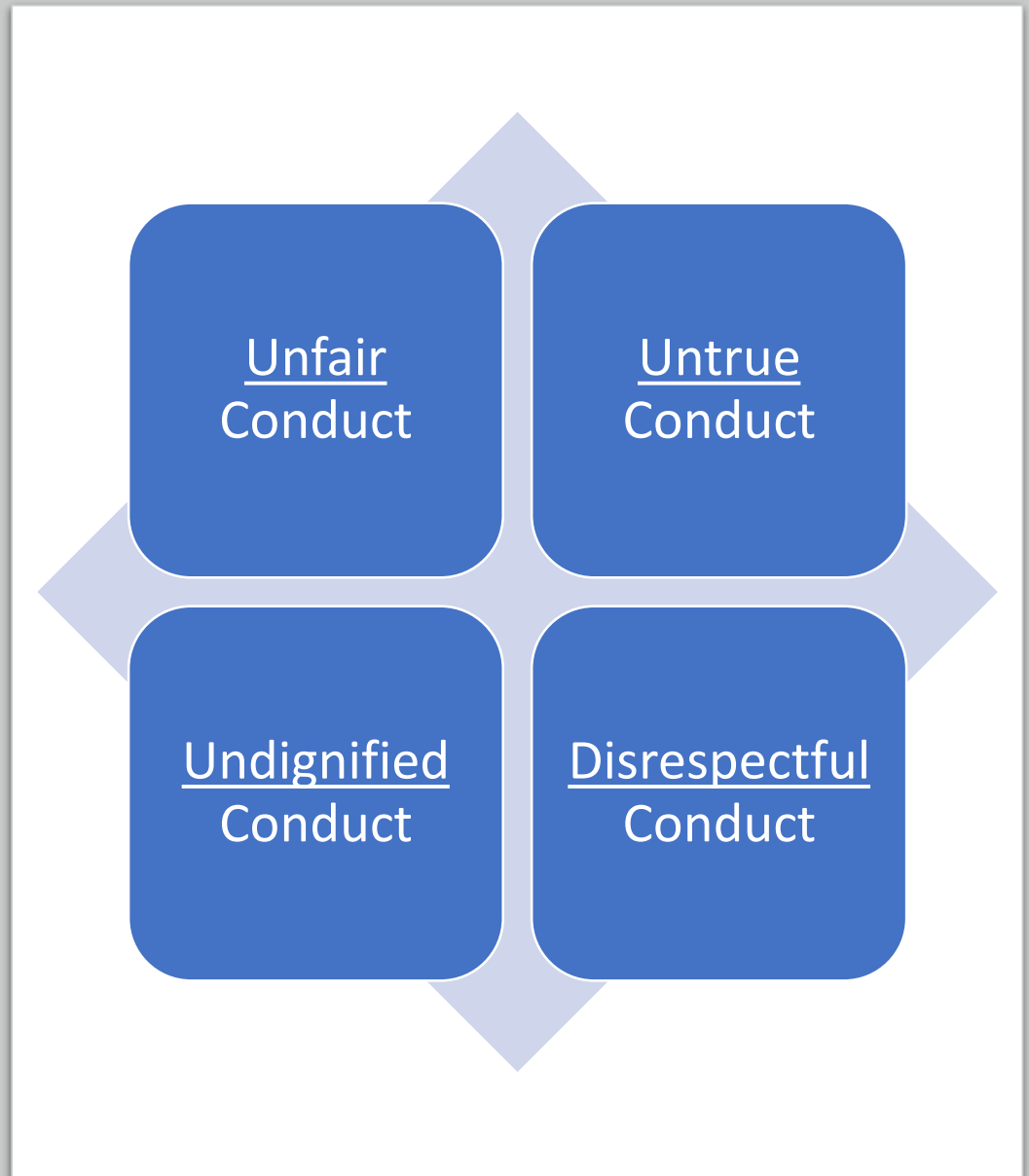
*Privacy:* Invasions of Privacy

First Words of the Statute: There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. 15 U.S.C. 1692(a).

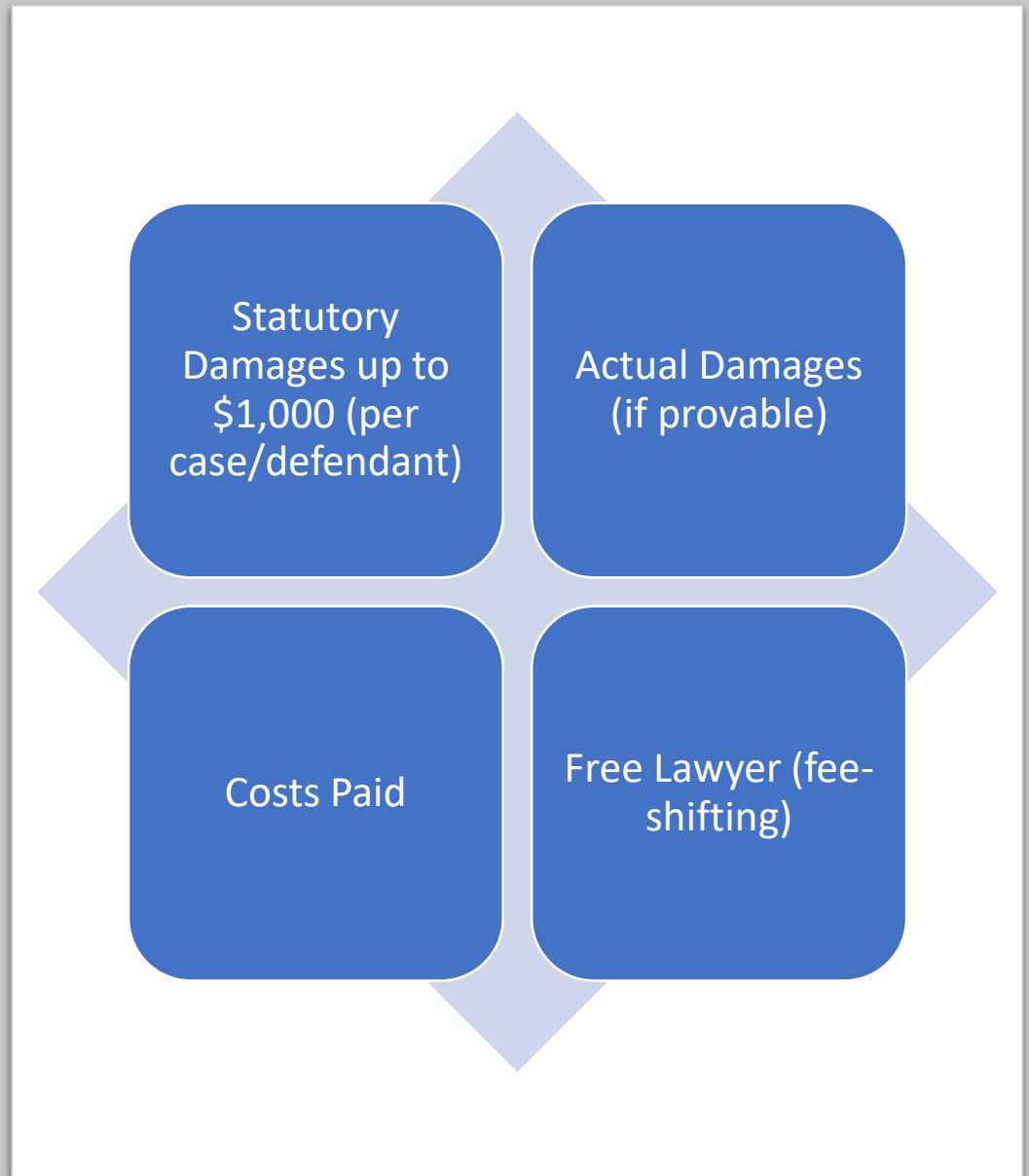
# Four Requirements for Bringing an FDCPA Claim

- *Consumer*: Natural person alleged to owe a debt (or any person affected by a violation)
- *Consumer Debt*: Defaulted financial obligation (Personal/Family/Household purposes; but not taxes, alimony, traffic tickets...it must derive from a voluntary transaction)
- *Debt Collector*: Third party who regularly in the course of business collects the debts of another
- *Violation of the FDCPA*

# Four Basic Tests for an FDCPA Violation



# Four Benefits to Consumers



# Who Has Liability?

- Third-Party Debt Collectors
- Lawyers: Covered when they are collecting consumer debts and if they do it regularly. Lawyers have been covered since 1986.
- “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another” 15 U.S.C. 1692a(6)

# Who Has Liability?

- Debt Buyers
  - A debt buyer is not covered under the “regularly collects” prong of the definition of “debt collector,” because the debts are owned by the debt buyer and not “owed or due another”
  - “principal purpose” prong of the definition not addressed by the Court; it remains and can include debt buyers
- *Henson v. Santander Consumer USA Inc.*, 582 U.S. \_\_\_, 137 S. Ct. 1718 (June 12, 2017)



# Who Does Not Have Liability?

- *Original Creditors*: Not covered by the FDCPA (unless they pretend to be a Debt Collector)
- *Servicers*: Not covered by the FDCPA (unless the debt was in Default when obtained -- servicers step into the shoes of creditors if obtained before default)
- *Mortgage Servicers*: Only if they took over servicing after default of mortgage
- *Debt Buyers* (with a principle purpose other than debt collection)
- *Basic Rule*: Once a creditor, always a creditor; Once a debt collector, always a debt collector.

# General Principles of Construction

- *Strict Liability*: Intent is irrelevant, with exception of the statutory defense found at 1692k(a)(3) and determining the amount of statutory damages.
- *Least Sophisticated Consumer Standard*: Violations are viewed from the perspective of the hypothetical least sophisticated consumer
  - The basic purpose of the least-sophisticated consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.
- The remedial nature of the FDCPA requires the Court to interpret it liberally

# What Drives Collectors

- Fundamental Truth: Collectors want a payment or a promise to pay
- Payment: Mission Accomplished
- Promise: Overcomes obstacle of denial, not my debt, not me, etc. Most people keep promises.
- Broken Promise: Moral cudgel for collector

# Most Common Violations

- Verbal abuse and harassment
- Failing to provide required notices
- Third-party collection contacts (family, coworkers, friends, neighbors)
- Illegal collection fees or “convenience” charges
- Robo-dialing cell phones (TCPA)
- Refusal to cease contact after written demand
- Threatening other unauthorized, illegal, or unintended actions

# How A Contingency Fee FDCPA Attorney Can Help

- Counsel clients about their rights (they don't know them)
- Review collection letters and credit reports
- Monitor collection calls and messages
- Stop collection communications in their tracks
- File suit against abusive collectors & recover money
- Assist in correcting inaccurate credit reporting issues
- Potentially get debts settled or waived altogether

# How Clients Can Help Themselves

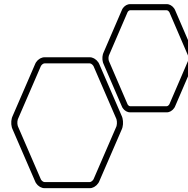
- Save all collection letters and notices
- Save voicemails and other messages
- Take pictures of caller ID information on cell phones
- Document all conversations in writing
- Don't challenge collector or try to cite FDCPA
- Get help from an FDCPA lawyer as early as possible



QUESTIONS?

Thank you!

Please do not hesitate to contact us with questions, suggestions, complaints, anything.



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