



Debt Buyers

From the Office of Minnesota Attorney General Keith Ellison

Has an unfamiliar debt collector called or written to you, or even filed a lawsuit against you, to collect money you don't believe you owe? If so, you may be the target of a debt buyer.

More and more these days, individual citizens report being pursued by debt buyers they have never heard of, sometimes for collection of money they do not owe. In some cases, the debt buyer may pursue the wrong person altogether, while in other cases the debt buyer may pursue the collection of debt that was already paid or that was in dispute (e.g., where the customer was a victim of identity theft).

What is a "Debt Buyer"?

In today's economy, many creditors—including credit card companies, utilities, phone companies, banks, and lenders—regularly sell to debt buyers old debts that they have been unable to collect. The creditors package these old debts into portfolios, which they sell to debt buyers for pennies on the dollar. It is not uncommon for a debt buyer to pay less than five cents per dollar owed.

The debt buyer purchases from the creditor an electronic file, or "datastream," of information about the portfolio of debts. The debt buyer usually does not purchase copies of individual contracts or account statements to substantiate that the individuals whose names are included in the portfolio actually owe the money.

Once the portfolio of old debt is bought, the debt buyer either aggressively pursues an individual for payment of the supposed underlying debts, or re-sells the portfolio to another debt buyer. When collecting, debt buyers often cast a wide net to find people who owe money.

Some citizens report being targeted by debt buyers for debt that isn't theirs. For example, individuals report being targeted by debt buyers for repayment of credit card bills for a credit card they never had, for utility bills at a place where they never lived, or for phone bills from a company they never received phone service

from. Others report being pursued for debt that was long-ago paid or for which they were a victim of identity theft, which had previously been reported to and resolved with the original creditor. Other people say they were pursued by a debt buyer for debt that was discharged in bankruptcy or that is far beyond the applicable statute of limitations for filing a lawsuit in court.

The Debt Buying Industry

The debt buying industry has grown enormously. Many attribute the start of the industry to the savings and loan crisis of the late 1980s and early 1990s. In the 1980s, the government auctioned off for collection nearly \$500 billion in unpaid loans that creditors had owned to the private sector, which profited from collecting on the debts. Seeing a new market niche, debt buyers thereafter began to purchase other kinds of debt as well.

Debt buyers are often financed in part by large national banks and Wall Street private equity funds. In other words, many of the credit card companies and banks that sell their old debt to debt buyers partially fund the debt buying industry.

There are believed to be hundreds of debt buyers operating in America today, including small regional companies, but the Federal Trade Commission estimates that the nine largest companies buy approximately 75 percent of the nation's delinquent consumer debt.

What Makes Debt Buyers Different?

There are several facts that make debt buyers somewhat different than original creditors in their collection efforts.

First, when purchasing a portfolio of old debt, a debt buyer generally only purchases an electronic file of information that contains basic information about the debts, such as the names of supposed debtors and the amounts owed. The debt buyer usually does not purchase any documents or other evidence that shows that individual citizens owe the money, such as account statements or charge slips.

These electronic files are often rife with errors. For example, some citizens report that an original creditor sold debt that the citizen paid off years ago.

Second, the debt that is purchased is often very old. This debt is often called “zombie debt” because it is so old. Some citizens report being pursued for collection efforts by a debt buyer for debt that originated ten or more years ago. To make matters worse, debt buyers often take the position that they will continue to pursue an individual citizen for payment of a debt unless and until the person can prove they don’t owe the money. Many people, however, don’t keep cancelled checks, account statements, or other proof of payment that goes back that far and therefore have a hard time coming up with the proof that they paid the bill. Further, individuals are often unfairly stuck attempting to prove a negative (i.e., that they don’t owe money), when under the law a collector is not supposed to pursue a citizen for payment of a bill unless the collector has substantiation that it is owed.

Third, debt buyers are often particularly aggressive in their collection attempts. They cast a wide net to find people who *may* owe money, and they often pursue the wrong people. Debt buyers often run assembly line-like “mills” and quickly turn to courts and lawsuits to collect money. It is routine for debt buyers to continue to hound individuals for debt after such individuals have stated that the debt is not owing. Since it is costly or impossible for debt buyers to verify a debt, they often do not do so, but instead continue with their collection efforts. Some individuals pay debts they do not owe just to get debt buyers to stop calling, or to ensure that the debt does not wrongfully end up on their credit report. Because the debt buyer has no relationship to maintain with the consumer, debt buyers may be particularly aggressive and unprofessional in their dealings with individuals.

The Reappearing Debt

It is not uncommon for a creditor to sell a debt portfolio to an initial debt buyer, who pursues collection for a while and then sells the debt to another debt buyer, who may sell it to yet another debt buyer. In this way, some debts are bought and resold many times over for a period

of many years. As a result, some citizens report that they thought they fixed a problem with a debt buyer who wrongly pursued them for money they didn’t owe, only to later be pursued by other debt buyers for the same debt.

Your Rights and the Need for Better Regulation of Debt Buyers

Some citizens who are incorrectly pursued by a debt buyer for money they don’t owe simply ignore the collection efforts. After all, the person doesn’t owe the money, and it is unfair to ask them to spend time resolving a problem that isn’t their fault. In order to fully protect yourself, however, the Minnesota Attorney General’s Office recommends that you exercise your rights under the federal Fair Debt Collection Practices Act (FDCPA).

If a debt buyer pursues you for money you don’t think you owe, you should dispute that you owe all or part of the debt under the FDCPA in writing. To do so, you should write to the debt buyer within 30 days after you receive an initial call or letter about the debt. Your letter—which you should send by certified mail so that you have a record of its receipt—should tell the debt buyer that you dispute that the debt is owed and ask the debt buyer to substantiate the debt. You may wish to request the following substantiation in your letter, as applicable:

- (1) the name and address of the original creditor;
- (2) the date on which the alleged debt was incurred;
- (3) an itemization of the debt (i.e., what portion of the total amount constitutes principal, interest, fees, other charges);
- (4) a summary of your payment history on the debt;
- (5) a copy of the applicable contract giving rise to the debt; and
- (6) a copy of the underlying account statement and other written validation and explanation of the debt.

While it takes time for you to write such a letter, it may save you time and headaches down the road—and may prevent the debt buyer from wrongly suing you, reporting the debt to a credit reporting agency, or reselling the debt to another debt buyer.

For years, the courts applied the FDCPA to all debt buyers. In 2017, however, the United States Supreme Court ruled for the first time that the FDCPA does not apply to debt buyers whose principal business purpose is something other than the collection of debts. The United States Congress is the government body with the authority to change federal law. The Congress could enact legislation that ensures the FDCPA's protections equally apply to all debt buyers. If you would like the Congress to enact such a law, you should contact your elected legislative representatives at the federal level.

In the meantime, if you are pursued by any debt buyer for money you do not owe, this Office recommends that you take the steps outlined above to write to the debt buyer within 30 days to voice your objection and to ask the debt buyer to provide substantiation that you owe the money.

Check Your Credit Report

If you are wrongfully pursued by a debt buyer, you should obtain a free copy of your credit report to find out whether the original creditor or the debt buyer has reported the debt to the credit reporting agencies. To obtain your free credit report, go to www.annualcreditreport.com or call (877) 322-8228. If there are inaccuracies on your credit report, you have certain rights under federal law to correct the mistakes. (For more information, see the Attorney General's bulletin entitled, *Credit Reports*)

If a Debt Buyer Sues You

As noted above, debt buyers often turn to the courts to aid in their collection process. Some people who are sued by debt buyers do not recognize the name of the party who is suing them and ignore the lawsuit. It is very important that you not ignore a lawsuit. If you want to contest the debt, it is very important that you serve a formal Answer

to the lawsuit. The Answer is the legal document a person serves to contest a lawsuit. If you do not serve an Answer, the debt buyer may obtain a default judgment against you, which will harm your credit and may result in your bank accounts or wages being garnished. (For more information, see the Attorney General's bulletin entitled, *Answering a Lawsuit*.)

If a Debt Buyer Seeks a Default Judgment Against You

Under Minnesota law, a lawsuit based on an unpaid debt expires if it is not brought within six years of the last payment on the debt. Minnesota Statute § 548.101 applies to cases filed by debt buyers seeking default judgments against Minnesota citizens in state court for claims upon an assigned obligation arising out of any consumer debt that is primarily for personal, family, or household purposes and in default at the time of assignment.

Depending upon the amount of debt allegedly owed, a claim may be brought in district court or conciliation court. Regardless of which court the action is brought in, the law requires debt buyers to provide a court with certain basic evidence with any request for default judgment, including admissible evidence that:

- (1) the defendant owes the debt,
- (2) the amount claimed to be owed is accurate, including a breakdown of any fees, interest, and charges added to the amount the debt buyer seeks in the lawsuit, and
- (3) a valid and complete chain of assignment of the debt from the original creditor to the debt buyer seeking the default judgment exists, including documentation evidencing that the *particular debt at issue* was included in the assignment.

If the claim is brought in district court, the debt buyer must:

- (1) provide proof that a summons and complaint were properly served on the debtor and the debtor did not timely answer and
- (2) mail a notice of intent to apply for default judgment to the debtor at least 14 days before it requests, applies, or moves for default.

If the claim is brought in conciliation court, the debt buyer must provide proof that it or its attorney used reasonable efforts to provide the court administrator with the debtor's correct address.

If you believe a debt buyer is not following this law, please contact the Attorney General's Office and consider notifying the judge in your case of the law and the debt buyer's potential non-compliance with it.

If you have questions or have been wrongfully pursued by a debt buyer, contact the following agencies:

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Minnesota Department of Commerce

Market Assurance Division
85 East Seventh Place, Suite 280
St. Paul, MN 55101
(651) 539-1600 or (800) 657-3602
www.mn.gov/commerce

Federal Trade Commission

Consumer Response Center
600 Pennsylvania Avenue NW
Washington, DC 20580
(877) 382-4357
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