

YOUR RIGHTS AS A DEBTOR



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

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INTRODUCTION

We are all consumers, and most of us are also debtors. If you have ever bought anything on credit, you became a debtor. Many people experience difficulties repaying their debts. If you are being hounded by creditors, know that you do have rights. If you ever feel you are being treated unfairly, keep in mind these federal laws: **The Fair Debt Collection Practices Act (FDCPA), Fair Credit Reporting Act (FCRA), Fair Credit Billing Act (FCBA), and the Servicemembers' Civil Relief Act of 2003 (SMCRA).**

THE FAIR DEBT COLLECTION PRACTICES ACT

The FDCPA sets the guidelines debt collectors must follow. Debt collectors may not harass, abuse, or oppress anyone in an attempt to collect a debt. They are prohibited from making false or misleading statements. The FDCPA specifically prohibits debt collectors from communicating with a consumer or the consumer's family:

- at unusual or inconvenient times or places -- before 8:00 a.m. and after 9:00 p.m. are considered inconvenient times;
- at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication;

- after the consumer notifies the debt collector in writing that he refuses to pay the debt or that he wishes the debt collector to cease further communication with the consumer, except that the debt collector may notify the consumer that the debt collector intends to invoke a specific remedy; and
- if a debtor is represented by an attorney with regards to the debt, and the debt collector can easily identify the attorney's name and address,

THE FAIR CREDIT REPORTING ACT

Consumers are afforded further protection under the FCRA. The purpose of the FCRA is twofold. First, it ensures that credit reporting agencies are fair to the consumer. Second, it requires reporting agencies to provide accurate and up-to-date information. Any reference to a declaration of bankruptcy should be deleted after 10 years. After 7 years all other unfavorable information should not appear on credit reports.

Under FCRA you have the right to obtain the identity of anyone who has requested your credit report for employment purposes within the past 2 years. You may also find out who has requested your report for other purposes within the past 6 months. You have the right to dispute the accuracy of their credit reports. A credit reporting agency must investigate any reasonable dispute a consumer has. If the consumer still disputes the information after the agency has investigated, the consumer may add a short statement to his report and the

agency must provide notice on the report that the information is disputed.

THE FAIR CREDIT BILLING ACT

The FCBA offers consumers protection against errors on their bills. You should always review your billing statements with care. If you do find an error you must write the issuer of the card to notify them of the error. This notice must be received within 60 days after the issuer mailed the first bill containing the error.

The letter should include your name, account number, the date, type, and dollar amount of the charge you are disputing and why you feel there is a mistake. You should also ask the issuer for proof if they contend the bill is correct. Your letter should be sent to the special address for billing inquiries designated by the card issuer; this address may be different than the address where you mail your payments. Send your letter certified mail, and be sure not to put your letter in the same envelope as your payment.

If you do all this, the card issuer must acknowledge your letter in writing within 30 days after receipt, unless the problem is already resolved. The issuer also must conduct an investigation, and either explain why the bill is accurate or correct the error within 90 days. If the issuer contends the bill is correct, then documents providing proof of this must be included in the issuer's response.

SERVICEMEMBERS' CIVIL RELIEF ACT (SCRA)

The SCRA was signed into law 19 December 2003 by President Bush to replace the antiquated Soldiers' and Sailors' Civil Relief Act of 1940. It is designed to ensure that servicemembers are not disadvantaged either legally or financially when serving their country. One of the provisions allows for some preservice debt to be capped at a six (6) percent APR. The SCRA also requires that there be a reduction in monthly payments, and that any interest in excess of 6 percent is forgiven, not deferred.

CONCLUSION

Be aggressive with all of your debts and ensure that you know all your rights. If you have any questions as to what you should do in your particular circumstance, take the time to see one of your legal assistance attorneys at the Legal Office.

This pamphlet is for basic information on debtor's rights as they relate to military personnel stationed in Alaska. It is not intended to take the place of legal advice from a Judge Advocate. Please contact the 354th Fighter Wing Legal Office for questions and further information.



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