

Debt collectors have the right to take reasonable steps to recover unpaid debts, but they must do so lawfully.

Victorians Debt collectors are only permitted to contact people about paying their debts:

- between 7.30am and 9pm on weekdays
- between 9am to 9pm on weekends
- on days other than public holidays:

Debt collectors can only make contact by phone or letter to a maximum of three times a week or a total of 10 times a month.

Debt collectors can only visit people about their outstanding debts when they have obtained prior permission to make the visit, or if the person who owes money has failed to advise the debt collector of an alternative way to make contact.

Debt collectors can then only visit a home or workplace between 9am and 9pm, and no more frequently than one visit per fortnight. They must not discuss a debtor's situation in front of or within the hearing of others at a workplace, and must leave the home or workplace when asked to do so.

When a debt collector makes contact

People contacted by a debt collector should:

- ask for all information about the alleged debt in writing before making any payment
- advise if they have paid the debt and supply proof including copies of receipts or bank transaction details
- ask for written proof the debt collector is authorised to pursue the debt
- keep a record of all contact from the debt collector, including the dates and times of calls and the name of the person spoken to.

Debtors may ask another person, including a financial counsellor, to deal with a debt collector on their behalf.

Lawful debt collector behaviour

Debt collectors cannot send people to prison for unpaid debts. They must behave lawfully and cannot threaten or physically intimidate a debtor. Debt collectors can write or phone people who owe them money and demand payment. They can also:

- take debtors to court to recover debts if they follow correct procedures

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Or call 1800 149 689

- seize and sell any property used as security for the debt.
- obtain an order from a court that allows the sheriff to seize and sell some of the debtor's property, such as a home or a car worth more than \$6,500 (but excluding basic household goods) even when there is no security held.

Unacceptable behaviour by debt collectors

In seeking to resolve a debt, a debt collector must not:

- use or threaten force towards a debtor, their family or other person connected with them
- damage or threaten to damage the debtor's property, block access or block the debtor's way
- make unauthorised contact with a child under 18 years
- talk about the debtor's situation to others unless the debtor has given them explicit permission
- make false statements about what will happen if the debt is not paid.

Options for paying a debt

collector

A debt collector may demand that a debtor make full payment in a short time-frame if repayments are in arrears. However, people should not be pressured into borrowing money (even from friends or family) until they have at least sought professional advice. There are usually other ways to deal with debt problems, including:

- offering to pay by instalments while looking for other options to pay
- seeking a variation of repayments on the ground of hardship because of job loss
- offering to pay a smaller lump sum as full and final settlement
- asking for the debt to be waived where the person has limited assets and cannot pay
- doing nothing and waiting to be sued. People with no assets and no income to pay the debt (for instance, those on Centrelink payments) may not be affected by waiting in practical terms. However, by choosing this option, any court order issued will be listed on their credit report for five years
- applying for voluntary bankruptcy.

Disputing a debt

A debt may be disputed on the grounds:

- it is not the person's debt
- it has already been paid
- the details, such as the amount

claimed, are incorrect

- it is a statute-barred debt. If no payments have been made for six years, there has been no written admission of responsibility for the debt during that time, and there is no court judgment against the person for the debt, a debt is referred to as "statute-barred".

When a debt in dispute cannot be resolved, a consumer may take the matter to an industry ombudsman or the Victorian Civil and Administrative Tribunal. Creditors will usually take small debts they have not been able to recover to the Magistrates' Court

If a debt collector is acting illegally

Despite federal and Victorian consumer protection laws, instances of harassment, coercion and other problems by debt collectors are often reported.

People concerned about a debt collector's conduct should contact Consumer Affairs Victoria on 1300 558 181 for advice. A formal complaint can be lodged with Consumer Affairs Victoria in instances of harassment.

People feeling physically intimidated can report the debt collector to the police.

Sources

Key messages

- Debt collectors cannot threaten or intimidate debtors, or have them sent to prison
- Debt collectors have to consider requests for flexible payment arrangements for most debts
- Debt collectors cannot visit a debtor's home or workplace with their permission if the debtor has provided them with other contact details

Consumer Affairs Victoria: Debt collectors; your rights in Victoria (Financial Services Fact sheet)

Fido website:

www.fido.gov.au

The information on this fact sheet is general and does not constitute legal advice.

MoneyHelp's products and services have been prepared for the information of Victorians who have experienced or are facing job loss or reduced working hours because of the economic downturn. These people can phone 1800 149 689 to speak to a MoneyHep financial counsellor. A financial counsellor will discuss a range of debt payment options based on an individual's circumstances.