

Debt Collection Procedures Related to Identity Theft

Please note: The information provided in this document does not constitute, and is no substitute for, legal or other professional advice. Seek consultation from legal or other professional advisors for individualized guidance regarding the application of the law to your particular situation or regarding other compliance-related concerns.

Recently, New York State law was amended to prohibit debt collection against debtors who are victims of identity theft. NYS General Business Law section 604 et seq. Under the law, the debtor who is alleging to be a victim of identity theft must present notification to the “principal creditor” or any debt collector pursuing collection, that includes a copy of a valid police report alleging the debtor in a victim of identity theft, and a written statement that the debtor claims to be a victim.

Upon notification by the consumer that the debt arose from identity theft, the principal creditor must temporarily stop attempts to collect the debt and pursue an investigation of the case. The principal creditor must review the information in good faith, and then determine whether it establishes that the debtor is not responsible for the debt in question.

Q. What is a “consumer claim”?

A. “Consumer claim” means any obligation of a natural person for the payment of money or its equivalent which is or is alleged to be in default and which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes. Such term includes an obligation of a natural person which is a co-maker, endorser, guarantor or surety as well as the natural person to whom such credit was originally extended.

Q. What is a “Debtor”?

A. “Debtor” means any natural person who owes or who is asserted to owe a consumer claim.

Q. What is a “Principal Creditor”?

A. A “Principal Creditor” means any person, firm, corporation or organization to whom a consumer claim is owed, due or asserted to be due or owed, or any assignee for value of such person, firm, corporation or organization. Such term shall include any person, firm or corporation engaged in business, the principal purpose of which is to regularly collect or attempt to collect debts obtained by or assigned to such person, firm or corporation, that are in default when obtained or acquired by such person, firm or corporation.

Q. What information must the principal creditor receive from a debtor in order for the principal creditor to be required to cease collection activities until completion of a review?

A. The debtor must provide:

- a) A copy of a valid police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, for the specific debt being collected by the principal creditor; and
- b) The debtor’s written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the principal creditor.

Q. What documents will satisfy the requirements for the Debtor written statement?

A. a) a signed Federal Trade Commission ID Theft Victim’s Affidavit. See <http://www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf>

or

- b) A written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. A person submitting such certification who declares as true any material matter that he or she knows to be false is guilty of a misdemeanor. Such statement must contain or be accompanied by, the following, to the extent that such items are relevant to the debtor’s allegation of identity theft with respect to the debt in question:
 - i. A statement that the debtor is a victim of identity theft;
 - ii. A copy of the debtor’s driver’s license or identification card as issued by the state;
 - iii. Any other identification document that supports the statement of identity theft;
 - iv. Specific facts supporting the claim of identity theft, if available;
 - v. Any explanation showing that the debtor did not incur the debt;
 - vi. Any available correspondence disputing the debt after transaction information has been provided to the debtor;
 - vii. Documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred;

- viii. A telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement;
- ix. To the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible; or
- x. An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.

The certification required pursuant to the law is sufficient if it is in substantially the following form:

I certify that the representations made are true, correct, and contain no material omissions of fact.

(Date and Place)

(Signature)

If a debtor notifies a principal creditor orally that he or she is a victim of identity theft, the principal creditor should notify the debtor, orally or in writing, that the debtor's claim must be in writing. If a debtor notifies a principal creditor in writing that he or she is a victim of identity theft, but omits information required pursuant to the law, and the principal creditor does not cease collection activities, the principal creditor must provide written notice to the debtor of the additional information that is required.

- Q. What happens when the Principal Creditor receives the complete statement and information described above?
- A. The principal creditor must review and consider all of the information provided by the debtor and other information relevant to the review. The principal creditor may recommence debt collection activities only upon making a good faith determination based on all the information provided by the debtor and other information available to the principal creditor in its file or from the creditor that the information does not establish that the debtor is not responsible for the specific debt in question. The principal creditor's decision must be consistent with federal law 15 U.S.C. 1692f(1).¹

If the principal creditor decides the information provided is insufficient to establish that the identity theft is the cause for the debt in question, the creditor must notify the debtor in writing of the determination before beginning any further debt collection activities.

- Q. What further activity must the principal Creditor take if it is determined that the debtor is a victim of identity theft, and the principal Creditor ceases collection activities?

¹ 15 U.S.C. 1692f provides that a debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Subdivision (1) prohibits the collection of any amount (including interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or authorized by law.

- A. Within five(5) business days of the decision to cease collection activities, the principal creditor must:
- a) If the principal creditor has furnished adverse information to a consumer credit reporting agency, notify the agency to delete the information; and
 - b) Notify the debtor that debt collection activities have been terminated based upon the debtor's claim of identity theft.
- Q. What are the possible consequences for violating this law?
- A. The NYS Attorney General may bring an action in court to seek an injunction. A court may impose a civil penalty of not less than \$500 nor more than \$1,000 for each violation.
- Q. Where can I get more information?

Go to the New York State Consumer Protection Board (CPB). See CPB's Consumer Debt Collection Information Center.

http://www.consumer.state.ny.us/debt_collection.htm

Office of the New York State Attorney General

http://www.oag.state.ny.us/bureaus/consumer_frauds/tips/debt_collectors.html