

Client Alert

Changes to California Law Impact Collection of Consumer Debt

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A recent change to California law significantly limits the ability of debt collectors to collect a time-barred consumer debt. Effective January 1, 2019, amendments to the Rosenthal Fair Debt Collection Practices Act will require debt collectors to notify debtors if they are attempting to collect a time-barred consumer debt. The changes also prohibit debt collectors from initiating legal proceedings to collect the debt under most circumstances.

California law defines “debt collector” as “any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection.” The term includes original creditors and “any person who composes and sells, or offers to compose and sell, forms, letters, and other collection media used or intended to be used for debt collection.”

Once a debt becomes time-barred, the amendments require debt collectors to explain in any subsequent “first written communication” that the debt is time-barred. Most debts are time-barred after four years. The amendments require debt collectors to use specific language, which varies depending on whether the debt is past the federal Fair Credit Reporting Act’s date for obsolescence (typically seven years after the delinquency date). If the debt is not past the obsolescence date, the notice must state:

The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt collector] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.

If the debt is past the obsolescence date, the notice must state:

The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency.



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After the time for initiating legal proceedings to collect a debt has expired (again, usually four years), a person may not initiate proceedings to collect the debt. The time to commence an action may only be extended if the debtor acknowledges the debt in writing and signs the acknowledgment. Before the amendments, a person could sue on a time-barred debt, and the debtor was responsible for raising the statute of limitations as an affirmative defense.

A debt collector who violates the new requirements, or any other provision of California's Fair Debt Collection Practices Act, can be liable to the debtor for any actual damages the violation causes and a statutory penalty of between \$100 and \$1,000. In addition, the debtor is entitled to an award of attorneys' fees and costs if the debtor prevails against the debt collector in a lawsuit.

As a practical matter, the amendments will make the collection of consumer debts very difficult after the statute of limitations expires. Because debt collectors are required to notify debtors that the debts are time-barred, debtors will be more likely to ignore communications from debt collectors. Thus, as of January 1, 2019, it will be even more important to initiate a debt collection action within four years of the delinquency. Contact one of the authors of this article if you have questions about the amendments or would like assistance collecting a debt.