

Know your rights when the debt collector calls

By EILEEN AJ CONNELLY AP Personal Finance Writer

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NEW YORK — Most days when Janine Cain returns home from work, there are at least three messages on her answering machine. And she can expect more calls in the evening.

That isn't because she's popular — the calls are from debt collectors. "We don't pick up the phone unless we know who it is," she said.

At last count, there were eight different collection agencies trying to track her down, the result of not paying her credit card bills since late 2007.

That was when the Cain family got hit from two sides. Her husband Paul started to see his construction work hours dwindle and was eventually laid off. What's more, the monthly mortgage payment on their Le Roy, N.Y. home rose by about \$400. The hike could not be foreseen: it was the result of a miscalculation in their escrow payments that stretched back five years, not a risky unconventional mortgage.

But like millions of other people around the country, the Cains faced a Catch-22. "Do you keep your house, and keep the electricity on and keep the water running, or do you pay your credit cards?" asked Janine Cain who said that with fees and penalties, her credit card bills now add up to about \$22,000. "Many people who have lost their jobs in the past few months are going to be faced with the same choice."

And like the Cains, many will be hearing from collection agencies as they try to grapple with their debts.

In the last three months of 2008, nearly \$7 billion of credit card debt alone was written off as unpaid, according to Kaulkin Ginsberg Co., a consulting firm for the collections industry. In December, the firm estimated more than \$20 billion of U.S. consumer debt was at risk of default, more than twice what it was a year earlier, because of rising unemployment.

Much of that is likely to end up being sent to collection agencies. And many people, especially if they don't have the means to pay off those debts, may be tempted to ignore letters and calls from collectors. But that won't solve the problem.

"If they're trying to contact you, they're not going to go away," said Rick Doane, president and chief executive of Sunrise Credit Services Inc., a collection agency in Farmingdale, N.Y. "If they can't contact you, that leaves only one alternative, search for your assets and look to sue you."

There are steps consumers can take before they end up with a subpoena, but they should know their rights and carefully guard personal information when dealing with a debt collector.

The federal Fair Debt Collection Practices Act details an individual's rights in such situations, including setting rules for when and how they can contact you and others about your debt.

In general, collectors can call only between 8 a.m. and 9 p.m.; can't call you at work if you tell them you can't receive such calls there; can ask others for information about how to find you but can't reveal anything about

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your debt; and must deal with your attorney instead of you if you've informed them you have one. Debt collectors are not allowed to threaten or harass consumers. And you have the right to tell collectors to stop contacting you, although that doesn't address the outstanding bills and could result in them filing suit to pursue the money.

The Federal Trade Commission, in its annual report to Congress on enforcing the law, said it received nearly 71,000 complaints about violations in 2007, almost 21 percent of all complaints to the agency.

"Like every industry, our industry is perfect until someone winds up on the news for being a complete idiot," Doane said. He maintained that most people in the collection business are professionals who know the rules, and are trying to help people.

He also acknowledged that the first contact, in particular, can be difficult. "It's an explosive phone call, emotionally, right from the beginning, and the bill collector is prepared for that, but the debtor may not be," he said.

Most states have additional laws regulating collections, including setting statutes of limitations on how long debts can be pursued.

Gerri Detweiler, an adviser with Credit.com, advises people with debt problems to first examine their budget. Even if the phone is ringing or the mailbox is filling up with notices, she said people must prioritize their bills and identify essentials, which means keeping a roof over their head and food on the table before trying to pay down debt.

In "Debt Collection Answers: How to Use Debt Collection Laws to Protect Your Rights," which Detweiler co-authored, she notes that when dealing with collectors, consumers don't have to reveal information about their income, other credit accounts, how much equity they have in their home or in the bank.

That's important to remember, because Doane of Sunrise Credit Services said collection agents will ask many questions to try to determine someone's ability to pay.

If you can't pay all of your debt at once, it is usually possible to create a payment plan with the collection agency, which will sometimes reduce the balance. Doane said the larger the debt and the faster it will be paid, the easier it is to get the total cut. For a \$10,000 debt, for instance, an offer to pay \$8,000 in two installments would likely be accepted quickly, he said.

When dealing with a collector, consumers should keep careful records of conversations and copies of all correspondence. And if you agree to pay the debt, you should ask the agency to remove it from your credit report once it's paid — and get an agreement to do so in writing before making the first payment.

Steve Ely, president of personal information solutions for the credit reporting agency Equifax, explained a debt turned over to a collection agency appears on credit reports twice. It appears once as unpaid to the original creditor and once in the "public records" section. "If you've got a collections notice sitting in your public records section, it's a big black mark," Ely said.

While most people who have serious debt issues have already damaged their credit score, removing such notices is a step toward repairing it. "If you can pay off the debt, most (collection agencies) will work with you and delete that," Ely said. The original creditors, however, are unlikely to remove past due reports from your report. "You're going to be stuck with that for another seven years," he said.

Both Doane and Detweiler said companies that offer "debt repair" cannot

do much for a consumer that they wouldn't be able to do for themselves. And some of those companies have been accused of defrauding people into paying fees up front, then do nothing to deal with their debt problems.

However, Detweiler said if you haven't reached the point where your debts have fallen into collections, but you're starting to fall behind, a nonprofit credit counseling agency may be a good first step.