



Debt Settlement in Texas

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Disclaimer

Pursuant to 11 U.S.C. Section 101 (12A) we are a Debt Relief Agency. The Schachter Law Firm, P.C., [Bankruptcy Attorneys Houston in Texas](#), help people file for bankruptcy as well as resolve other debt issues. Nothing contained on any page of this eBook, or on any page on [Shaklaw.com](#), should be construed as legal advice. Further, your use (or use by anyone else) of this eBook does not create an attorney/client relationship. You cannot create an attorney/client relationship with The Schachter Law Firm, P.C. until you have met with us and signed a contract.

1. Debt Collection Primer for the State of Texas

There are two sets of debt collection laws that help distressed consumers. They are the Texas Debt Collection Act and the Fair Debt Collection Practices Act. The Texas Debt Collection Act (“TDCPA”), which as its name implies is a **Texas law**, may be read here:

<http://www.statutes.legis.state.tx.us/Docs/FI/htm/FI.392.htm>

The Fair Debt Collection Practices Act (“FDCPA”) is a **federal law** which may be read here:

<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre27.pdf>

The laws themselves are straightforward, but there are a few exceptionally important points to remember:

A. Both laws ONLY apply to individual consumers.

If you are some type of incorporated entity, like XYZ, Inc. or Joe Bob’s Fisherria, LLC, you are not protected by these laws.

B. Both laws ONLY apply to consumer debts.

If someone is calling because you breached a commercial lease, or because you did not make payments on inventory for your business, you are not protected by these laws.

C. The FDCPA only applies to third parties collecting someone else’s debt or to debt buyers.

If you owe money on a Discover card, and Discover is calling you, you are not protected by the FDCPA. If Discover hires Beadum Down Collections to contact you regarding the debt, you *are* covered by this law, because Beadum Down is collecting someone else’s debt. If Discover sells its right to collect the debt to BloodfromTurnip Receivables, and BloodfromTurnip calls you, you *are* covered by the law because BloodfromTurnip is a debt buyer.

D. The TDCPA applies to original creditors, third parties, AND debt buyers, but it lacks one very important provision found only in the FDCPA--the right to be left alone.

If you read through the FDCPA, you’ll see that you have the right to be left alone. So long as you put in writing that you want the debt collector or debt buyer to cease communication with you, they must stop contacting you (be sure to send that writing in a way that you can prove it was received by the collector, such as by certified mail return receipt requested or by fax, where you keep the confirmation page). The TDCPA does not have this provision. Hence, if Discover card is calling you directly, you cannot make them stop. The TDCPA does have a provision that prohibits a creditor from calling repeatedly with the intent to harass or annoy, but it’s hard to know where the line is crossed, and what “repeatedly” means.

E. Both laws give you significant rights. READ THE LAWS. If you take it slowly, they are really not that bad. ALWAYS REMEMBER POINTS 1 AND 2 ABOVE.

If you are pressed for time, just read subsection D of the TDCPA, you’ll be amazed at what debt collectors and creditors are not allowed to do. If you are still pressed for time when you look at the FDCPA, consider reading sections 804-808.

2. Time-Line to Settle a Debt

Introduction:

You should set aside a total of 4-6 hours for each account you hope to settle. You will rarely ever spend more than half an hour at any one time, but it's **essential that every step you take is documented** (every phone call, letter, email, etc.). Each little bit of time expenditure adds up and this does not include the amount of time you spend thinking or worrying about each account.

Depending on how long it's been since you defaulted on the debt, it's not worth trying to settle until you have at least 15% of the principal to offer as a lump sum while also being prepared to make some monthly payments. This really varies by creditor, but the point is that you should not start the process until you at least have some reasonable percentage to offer. If you don't, review your basic rights under the [Texas debt collection laws](#). Proper use of the collection laws can almost certainly buy you a few months.

Step 1: Contact the creditor or the creditor's representative:

First get the person's name and direct phone number or extension. You will likely not be given a direct phone number or extension but insist on getting the person's name. Explain that you do not want to get lawyers involved and that you are calling to learn about their settlement parameters. They will probably ask for personal information, and it's ok to confirm your name, address and phone number. If it's a collection agency (as opposed to the original creditor), **do not give out your social security number**. Find out all you can about the debt: what is the balance as of today, when was your last payment, how did the company acquire the debt if it's a debt buyer, etc. See if they will mail you a detailed statement as this will buy you time.

Keep in mind that you may not get all, or any, of this information on the first phone call. It could take 3 calls, or 20, but the goal is to ensure that you know how much you owe and why you owe it. Take copious notes--remember that the person you are speaking to now may not be taking **accurate notes**. You also may not get to speak with this person the next time you call.

Remember that you are not required to stay on the phone, no matter how hard they try to keep you on the phone. If they are rude, hang up and take detailed notes of exactly what was said to you that caused you to hang up. These notes may be critical if you ever seek to use an attorney.

Step 2: Determine an offer that you know you can handle:

Once you have learned what the creditor is willing to do, you can come up with an offer. Be reasonable. No matter how many friends have told you they have settled their debts for 10 cents on the dollar, it's likely not true. These offers **do** appear from time to time, but the time and effort you spend waiting for them will further harm your credit and cause you undue stress. Based on your conversations with the creditor, figure out an amount you can afford to offer, be it a lump sum or a monthly payment. **Discount** that amount by 20% and make the offer.

Step 3: Repeat steps one and two above until you've reached a settlement:

You may be thinking "seriously?!?!? That's IT? Why do lawyers and all these companies ask to get paid to do this type of work?" That's really all there is to debt settlement. I can't speak for others but we ask to get paid because it's arduous and laborious work. Also, because we do this type of work every day, we are more likely to discover debt collection law violations as well as other opportunities that our clients can exploit to their benefit for better settlements.

Step 4: Once you have reached a settlement, insist on the offer in writing:

Unfortunately, it's not completely uncommon for creditors to mess up their records on settled debts. More than once in my career I have seen creditors and debt buyers file suit over debts that had been settled. In each case, our firm handled the settlement, so our client had a bullet-proof defense. In fact, filing suit on a debt that's settled violates the debt collection laws.

When our clients experienced this, not only did we get the lawsuits thrown out, our clients were paid a little bit of money for the annoyance of the process. Unless you have something in writing reflecting the agreement, as well as proof of payment, you will struggle to defend that lawsuit.

Step 5: Pay the settlement by check or other form of payment that can be tracked:

Do not pay by money order or cash. Absolutely do not give the creditor access to **your bank account**. You may need to be able to prove sometime in the future that the payment was received and cashed by the creditor. This is very easy to do with a check, very hard to do with a money order. You also might consider incurring the expense of mailing your payments via **certified mail**, return receipt requested as you will get written proof that the creditor received your payment.

Step 6: 3 months after settlement, pull your credit report to ensure that it reflects accurately:

Yet another unfortunate aspect of being a financially strapped individual is that the burden is on you to make sure your credit report is accurate. If you are not already doing so, you should take advantage of the government resource to get a copy of your credit report for free once per year. The government's website is <http://annualcreditreport.com>. **It is truly free**. Do not be put off by requests to pay for your credit score--simply follow the smaller links and you will, in fact, receive your credit reports for free. If there are **errors**, dispute them.

If you ultimately need help with this process, check out <http://myfaircredit.com> or <http://ftc.gov/bcp/menus/consumer/credit/rights.shtm>

If you get a 1099, don't fret!

It is fairly common for creditors to file a 1099 for any amount of debt forgiven. Without help, you would be forced to pay **tax** on the forgiven amount. If you are struggling financially, it's highly likely that you **qualify for an exemption** to pay this tax and it is essential that you seek the help of a competent CPA or other tax professional. A couple hundred dollars spent on an expert could save you multiples of that expense in taxes.

3. Beware of Charlatans

Nearly every day we either see or hear an **advertisement** related to consumer debts. Lawyer advertising is regulated by the State Bar of Texas, so the following discussion has nothing to do with lawyer ads, as all the ones I've seen and heard comply with the rules.

Every day we hear these ads and we hear flat out lies. "Bah," you may be thinking, "he's getting all lawyer on us. No way these companies are lying on TV or the radio, what about the truth in advertising laws?" We hate to tell you that **we have no such laws**.

In Texas we have the Deceptive Trade Practices Act ("DTPA") but once you sign a contract with a charlatan, you'd be hard-pressed to prove that you were harmed under the DTPA.

Here are some of the lies (**in bold italics**) I hear:

You have the consumer right to settle your debts for pennies on the dollar. (Actually, you don't)

Recent credit card legislation gives you new rights to settle your debts! (There is no such law)

If you have more than \$10,000 in debt we will get you out of it, all without debt settlement, consolidation or bankruptcy. (Really? I guess they intend to pay your debts because I am not sure of any other way, other than dying, to get out of debt without paying, settling, or filing bankruptcy.)

Bankruptcy will destroy your credit forever (Several million people who have received a bankruptcy discharge and have excellent credit might want to dispute that.)

We guarantee results (Technically this is not a lie, so long as the definition of "result" is very broad. Keep in mind that taking your money and doing nothing for you is a "result".)

Charlatans in the world of distressed consumers is nothing new. In 2005 and 2006, Congress revoked the non-profit charters of numerous "credit counseling" agencies for two fairly simple reasons: they weren't really not-for-profit, and they weren't exactly doing any counseling. (Read [this article in the Washington Post](#))

One would think that Congress' attempts to clean up the industry nearly 10 years ago would have had an effect. One would be wrong. Click any of the links below to see what you get when dealing with most debt settlement companies:

http://illinoisattorneygeneral.gov/consumers/everycentscounts/Debt_Debt%20Settlement%20Company%20Scam.pdf

<http://www.consumerreports.org/cro/magazine-archive/march-2009/money/scams/high-fee-debt-settlement/scams-high-fee-debt-settlement.htm>

http://www.smartcreditinfo.com/debt_settlement.html

<http://debtsettlementfraud.org/>

4. Costs

Legal fees for debt settlement

We love what we do for a living, otherwise we would not be doing it. There is a great joy in providing a relief of stress and a bit of hope to those struggling financially. Had we won the birth lottery and were given unlimited millions by our parents, we would absolutely do this work for free. Like many of our clients, however, we work hard to try to make a living and therefore must charge for our time.

We usually charge a flat fee for debt settlements, regardless of the amount owed. That fee **ranges from \$1,000 to \$2,000** and depends on several factors. Those factors include, among others: how many accounts you wish for us to settle, how much you have saved up to make settlements, and how long you need before you would actually make the settlement.

Many lawyers, and most non-lawyer debt settlement companies charge a percentage of what's owed and/or a percentage of what you were saved. So if you owe \$80,000 and work with a company charging 20% of the total amount owed, you are looking at \$16,000 in fees. At our firm, if that amount owed is covered by 4 or 5 accounts, the most you would pay is \$4,000-10,000. We think it a bit silly, and quite **unfair, to benefit disproportionately from someone's financial struggles**. We just want to be paid for our time, which is why we base our fees on the factors above.

Also, unlike most of the places that you will find on television or advertised on the radio, part of what you are paying for is regular and immediate contact. We will always return your calls and emails promptly. We are always available for a face to face meeting. You can look us up, do a background check on us, and all you will uncover is a **15 year stream of happy clients and a flawless record**.

5. Interchangeability of Terms

In the world of the financially distressed, a lot of terms get thrown around that may mean different things depending on who is using the term. Those terms are ***debt settlement, debt negotiation, debt consolidation and credit counseling***.

Unfortunately, there is no universally accepted definition for any of those terms. When seeking a professional to help you get out of debt, be careful when you throw these terms around. **What matters** is what that professional intends to do for you and how he or she intends to go about it.

Debt settlement usually means paying an agreed upon amount, less than the total amount owed, usually over no more than 3 payments. For this to work, you must have adequate funds on hand to pay the settled amount. If this is your goal, our firm requires that you pay money monthly into a separate account that is used solely for settlement purposes. **For example** if you owe \$6,000 on a debt and get an offer to make a one time payment of \$2,000 to settle in full, you won't benefit from that offer if you do not have the \$2,000. Another thing to consider is that when you settle a debt, you may get a **tax document** called a "1099" that states that the amount of debt that was forgiven is actually income. If this happens to you, there's a pretty good chance that you **would not have to pay tax** after discussing your situation with a competent CPA.

Debt negotiation is the process of communicating with creditors and collectors to resolve a particular debt. Like debt settlement, it often has the goal of a reduction in principal owed. If you still owe money to the original creditor, debt negotiation could result in a reduction or cessation of fees and/or interest. At our firm, debt negotiation is a critical part of debt settlement. Knowledge of the collection laws and credit card agreements is critical to this process as **we can often use violations of those laws to help get you a better deal**.

Debt consolidation generally means reducing all or most of your monthly debt obligations into one payment. This is usually accomplished by getting a loan for the total amount owed, where that loan has an interest rate that is lower than the average effective rates for all the individual loans. The debt consolidation loan pays off the individual loans such that you have only one (and hopefully lower) payment on one loan. This **only works if you have adequate cashflow** to make the monthly payments on the new loan. A [chapter 13 bankruptcy](#) is not a debt consolidation, but it often feels like it because most (and many times all) of your creditors are taken care of by one payment to a third party.

Credit counseling is the process of having a third party **negotiate lower interest rates** with your creditors so that you can be on a plan to be debt free in a certain amount of time. A true, ethical, credit counselor would charge a reasonable fee (usually about **\$50 a month**) and will also be honest with you about whether your cashflow is such that you could achieve success on the plan. Although there is likely more than one ethical credit counselor, the one that we regularly send people to is [Money Management International](#).

Remember, it does not matter if the person states he or she will do negotiation, consolidation, settlement, or counseling for you. The world of "professionals" helping people who struggle financially is filled with untrained charlatans simply out to make a buck. You could easily speak to someone who uses all four of the above terms interchangeably. What matters is what steps they say they will take for you and whether you have the cash flow to follow through.

6. Do's & Don'ts

Do

1. Stay in regular communication with the creditor or collector.
2. Take detailed notes of everything you do regarding trying to settle, especially notes of phone calls.
3. Mail everything via certified mail, return receipt requested, and keep the green card receipt.
4. Become acquainted with your rights under the Texas and Federal Fair Debt Collection Practices Acts.
5. Run away from a [debt settlement professional](#) who guarantees results. They can't. Every case is different and the professional can only guarantee effort.
6. Demand a customer service guarantee with respect to how quickly your phone calls and emails will be returned.

Don't

1. Allow anyone access to your bank account, even if it is supposed to get you a good discount.
2. Make any payments without having your agreement in writing.
3. Expect the creditor or collector to remove something from your credit report. They are allowed to report things accurately, even if it means reporting that you were behind at one point
4. Start settling your debts until you have written a plan that includes your monthly take home income, your budget, and how much you can afford to spend monthly to settle your debts.

Not interested in settling debts on your own? Tired of facing the process alone? Adam Schachter is one of the few Board Certified Bankruptcy Attorneys in Texas. Give Adam a call at 713-961-9477 or fill out one of our online forms and we'll speak with you for free to see how we can help.

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