

# Consumer Protection

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# Debt Collectors Calling?



**The Federal Trade Commission (FTC), enforces the Fair Debt Collection Practices Act (FDCPA), which prohibits debt collectors from using abusive, unfair, or deceptive practices to collect consumer debts.**

## **What is a debt collector?**

Under the FDCPA, a debt collector is someone who regularly collects debts owed to others. This includes collection agencies, lawyers who collect debts on a regular basis, and companies that buy delinquent debts to collect them.

## **What types of debts are covered?**

The Act covers personal, family, and household debts, including money you owe on a personal credit card account, an auto loan, a medical bill, and your mortgage.

## **Can a debt collector contact me any time or any place?**

No. A debt collector may not contact you at inconvenient times or places, such as before 8 in the morning or after 9 at night, unless you agree. Collectors may not contact you at work **if they're told not to do so or to stop.**

## **How can I stop a debt collector from contacting me?**

If a collector contacts you about a debt, you may want to talk to them at least once to see if you can resolve the matter – even if you don't think you owe the debt, can't repay it immediately, or think that the collector is contacting you by mistake. If you decide after the initial contact that you want the communication to cease, tell the collector – in writing – to stop calling you.

## **Here's how to do that:**

Write a letter telling the collector to stop contacting you. Make a copy of your letter. Send the original by certified mail "return receipt requested." Once the collector receives your letter, they may only contact you (1) to tell you there will be no further contact or (2) to let you know that they or the creditor intend to take a specific action, like filing a lawsuit. Sending such a letter does not get rid of the debt. The creditor can still sue you, but it should stop the contact.

### **Can a debt collector contact anyone else about my debt?**

If an attorney is representing you about the debt, the debt collector must contact the attorney. If you don't have an attorney, a collector may contact other people – **but only** to find out your address, home phone number, and work location. A debt collector is generally only permitted to discuss your debt with you, your spouse, or your attorney.

### **What does the debt collector have to tell me about the debt?**

Every collector must send you a written "validation notice" telling you how much money you owe within five days after they first contact you. This notice also must include the name of the creditor to whom you owe the money, and how to proceed if you don't think you owe the money.

### **What practices are off limits for debt collectors?**

**Harassment.** Debt collectors may not harass, oppress, or abuse you or any third parties they contact.

**False statements.** Debt collectors may not lie when they are trying to collect a debt. For example, they may not:

- falsely claim that they are attorneys or government representatives;
- falsely claim that you have committed a crime;
- falsely represent that they operate or work for a credit reporting company;
- misrepresent the amount you owe;
- saying you will be arrested if you don't pay your debt;
- saying they'll seize, garnish, attach, or sell your property or wages unless they are permitted by law to take the action and intend to do so; or
- saying legal action will be taken against you, if its illegal or if they don't intend to take the action.

### **Can a debt collector garnish my bank account or my wages?**

Yes. Generally, if you don't pay a debt, a creditor may sue to collect. If they win, the court may enter a judgment against you which states the amount of money you owe. This may allow the creditor to get a garnishment order against you. Wage garnishment enables your employer to withhold part of your compensation to pay debt. Garnishment usually requires a court order. Don't ignore a lawsuit summons. If you do, you lose the opportunity to fight a wage garnishment.

**Can federal benefits be garnished?** Many federal benefits are exempt from garnishment, including:

- Social Security Benefits
- Supplemental Security Income (SSI) Benefits
- Veterans' Benefits
- Civil Service and Federal Retirement and Disability Benefits
- Military Annuities and Survivors' Benefits
- Federal Emergency Management Agency Federal Disaster Assistance

**This is not absolute. Federal benefits may be garnished under certain circumstances, including to pay delinquent taxes, alimony, child support, or student loans.**

## AVOID HOME IMPROVEMENT SCAMS\*

Your home is likely to be your most valuable financial asset. Be extra careful when you hire someone to work on it. Virginia Code § 54.1-1103 provides that “No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless he has been licensed. . .” Contracting work includes construction, removal, repair or improvement of real property for a fee unless it qualifies for certain very limited exceptions. See VA Code § 54.1-1100. Definitions and § 54.1-1101. Exemptions

Contractor licenses consist of two parts: the **class** of license, which determines the monetary value of contracts or projects that may be performed (Class A, B, or C), and the **classification/specialty**, which determines what *type* of work the contractor is licensed to perform *i.e.*: (i) building, (ii) electrical, (iii) plumbing, or (iv) heating, ventilation.

### Tip-Offs to Spot Potential Rip-Offs

Watch out for scams or unlicensed contractors who:

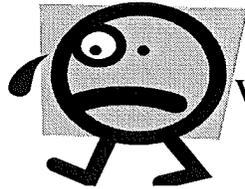
- Solicits door-to-door
- "Just happens" to have materials left over from a previous job
- Pressures you into making an immediate decision
- Asks you to pay for the entire job up-front
- Only accepts cash payments
- Asks you to obtain required building permits
- Doesn't list a business number in the local phone book

### Tips for Hiring a Contractor

- Deal **only** with licensed contractors.
- Make sure he is authorized to perform the type and amount of work you need.
- Verify license status and check any past disciplinary actions at [www.dpor.virginia.gov](http://www.dpor.virginia.gov) or by calling (804) 376-8511. **It is quick and easy!**
- Ask friends and neighbors for contractor referrals.
- Have several contractors give written bids/estimates. Don't automatically choose the lowest bidder. Ask for explanations on price variations among proposals.
- Licensed contractors are required by law to provide a written contract for residential work. Insist on detailed contract with agreed start and finish dates.
- Don't rely on verbal agreements. The code requires that there be a written document signed by both parties authorizing change orders. Get **all** guarantees, warranties, promises, and change authorizations in writing.
- Don't pay 100% of the bill until the work is 100% complete.
- Limit your down payment or deposit. A reputable contractor should be able to front the costs of most supplies without a large sum of money from you. A deposit of 10% - 30% of the total cost is a good rule of thumb.
- Make payments during the project contingent upon completion of certain tasks—**Not the passage of certain dates!** That way, if the contractor is behind schedule,

your payments are delayed. For example payments should be due after contractor completes X not after two weeks or some other arbitrary "time on the job."

- Keep file which includes contracts, change orders, receipts, and other documents.
- Take pictures. If possible videotape the problem while the contractor is there.
- Document pertinent dates such as when work started/stopped, payments were made, promises were broken, problems were noted, and date they were resolved.



### What to Do If You are Victimized.

Responding to contractor abuse can take time and effort. Make sure you launch a full out attack if you have been victimized.

- Contact the contractor directly **in writing** with your complaint.
- Contact your local police office. File charges if you suspect that the contractor was unlicensed, has taken your money, or engaged in fraud or other illegal activities. Ask that restitution be ordered as part of any criminal conviction.
- Contact the Licensing Board. File a complaint. It has the ability to discipline the contractor and to warn other consumers.
- Contact a lawyer who is knowledgeable in contractor claims to investigate civil relief. Depending upon the type of work done you may need another contractor to inspect the work and attest that it was not completed in a workmanlike manner.
- Contact the Contractors Transaction Recovery Fund. By hiring a licensed contractor, you may be eligible for monetary relief from the Contractors Transaction Recovery Fund in the case of improper and dishonest conduct. This fund helps consumers who have been victimized by dishonest contractors. However, there are "**detailed**" requirements for recovery. So make sure you contact them and a knowledgeable lawyer to fully protect your interest.

Adapted and Reproduced from Department of Professional & Occupation Regulations (DPOR) Consumer Guides to:

- [Hiring a Contractor/Avoiding Home Improvement Scams](#)
- [Ten Tips for Making Sure Your Contractor Measures Up \(PDF\)](#)
- [What You Should Know Before Hiring a Contractor \(PDF\)](#)
- For more information Contact:
  - 
  - **Virginia Department of Professional and Occupational Regulation**  
Compliance and Investigations Division
  - 9960 Mayland Drive  
Suite 400  
Richmond, VA 23233
  - Phone: 804-367-8504

## **DOES SOMEONE OWE YOU MONEY?\***

### **VIRGINIA'S ANSWER TO THE SMALL CLAIMS COURT**

Very often a citizen has a valid claim which can only be satisfied by a legal proceeding, but the claim may be too small in value to justify hiring a lawyer. Small claims in Virginia are adjudicated at the General District level. There is a general district court in each city and county in Virginia

#### **What kind of civil case can I bring in General District Court?**

General district courts have exclusive authority to hear civil cases with claims of \$4,500 or less and share authority with the circuit courts to hear cases of claims between \$4,500 and \$25,000. If your case involves an amount of \$4,500 or less **you must use General District Court.** If your case involves \$4,500.01 – \$25,000 you can sue in General District Court and take advantage of the many pre-printed forms and simplified trial process or may sue in Circuit Court.

#### **How Do I Bring A Civil Suit In General District Court?**

As a general rule, the simplest way to commence an action for judgment on a contract, personal injury, or other claim is by filing a Warrant in Debt with the court. The form is available online at <http://www.courts.state.va.us/forms/district>. If you need witnesses to prove your claim, you may also submit a request to the clerk to have them subpoenaed once a trial date is set.

#### **Where Should I Bring the Suit?**

To get the person you want to sue (the defendant) into court, you must bring suit in one of the places authorized by law. The simplest rule is that you bring suit in the city or county where the defendant lives, is regularly employed, or has a regular place of business. You may also bring suit in the city or county where your cause of action arose (where the act on which your claim is based took place). If the defendant is a non-resident of Virginia, you may bring suit wherever the defendant can be found, or owns property within the state.

You may sue a corporation in the city or county in which either its principal office or registered agent is located. This information may be obtained by calling the State Corporation Commission at (804) 371-9967. A foreign corporation (one not originally incorporated in the state of Virginia) can be sued in the location where the statutory agent resides, where its registered office is situated, or, in case of withdrawal from the state, where its last statutory agent resided, where its office was situated, or where it has any estate or debts owing to it within Virginia. It is important that you also sue the corporation in the appropriate legal name.

#### **When Should I Bring Suit?**

As soon as you realize that you are due monies that the defendant refuses to pay. Most claims in Virginia are governed by statute of limitations. This time varies by the type of claim. However, in all instances, failure to file within the time prescribed may forever bar your claim.

### **What should I expect on the day of trial?**

- The Judge may hear the evidence and render a ruling.
- The Judge may continue the matter and to a specific date and time in the future for trial.
- The Judge may require the parties to submitted detailed statements of their claims or defenses. For the plaintiff this is a Bill of Particulars. For the defendant it is a Grounds of Defense.
- If the Defendant does not appear but was properly served, a default judgment may be entered.

### **Will a Jury hear my case?**

No. All General District Court cases are heard by a judge.

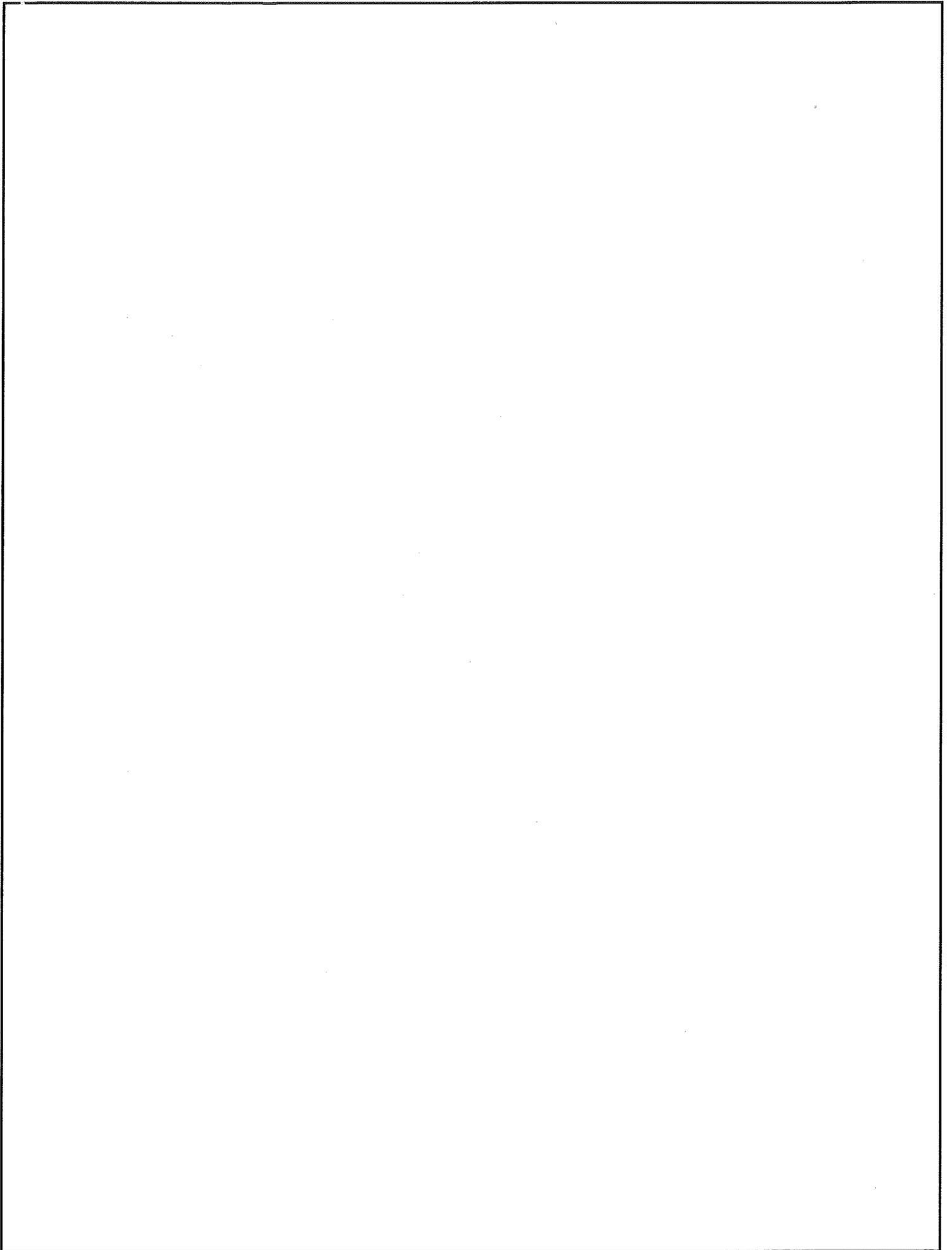
### **If I win, how do I collect my money?**

The defendant may voluntarily honor the judgment. If the defendant refuses to honor the debt and has no assets; your judgment may be worthless. However, if he has assets, you can “execute” against him through **further legal proceedings** such as:

- ***A writ of fieri facias*** . This writ creates a “lien” (claim) on the defendant’s personal property. To satisfy your claim out of this personal property, you may then ask the sheriff to “levy” on particular items of which you notify the sheriff, or on all the property. You will be required to post a bond with the sheriff to enable him to seize and sell the property and pay to you the proceeds of the sale.
- **Garnishment**. If the defendant works in the Commonwealth or has bank accounts here. You can obtain direct payment through wages or other debts owed to the defendant.
- **Real Estate Lien**. If the defendant owns real estate in Virginia. You can attach it by requesting a certified copy of the judgment (called an abstract) from General District court and taking it to Circuit Court for Docketing. This creates a lien against any real property the person owns in that locality.

**\*Adapted and Reproduced from the Supreme Court of Virginia’s General District Courts Informational Pamphlet.**

**For additional information and forms visit <http://www.courts.state.va.us>.**



PROMISSORY NOTE

In consideration of \_\_\_\_\_, receipt of which is hereby acknowledged, I, \_\_\_\_\_, social security number \_\_\_\_\_, do hereby promise to pay \$ \_\_\_\_\_ to the order of \_\_\_\_\_ (the payee), at the rate of \_\_\_\_\_ percent per annum, payable in \_\_\_\_\_ equal installments of \$ \_\_\_\_\_ per month, the first installment to be paid on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and the remaining payable, each one on the same day of each succeeding month thereafter until the note is paid in full.

All past due interest and principal shall bear interest after maturity at the rate of \_\_\_\_\_ percent per annum. It is understood and agreed that upon default in the payment of any installment of principal or interest, or any part thereof, when due, the holder thereof, at their election, may declare the unpaid balance of the principal and all accrued interest at once due and payable.

If this Note is placed in the hands of an attorney for collection, or it is collected through judicial proceedings, then I/we agree to pay any additional fees associated with the collection of this note. In case of renewal or extension of maturity of this note, any and all securities, or liens, given to payee by us or any of us, at any time, shall remain in full force and effect for payment of the renewed or extended note.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligations of all makers, sureties, guarantors, and endorsers, and shall be binding upon them and their successors and assigns.

Given under my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(SEAL)

STATE OF VIRGINIA  
COUNTY OF PRINCE GEORGE

Sworn and subscribed to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who personally appeared before me on this date.

\_\_\_\_\_  
Notary Public

My commission expires:

# FIGHTING IDENTITY THEFT

Although exactly which actions to take will vary depending on individual circumstances, nearly everyone who fears they have been the victim of identity theft should follow these basic steps:

## 1) Fraud Alert

Immediately contact the fraud department of one of the three major credit bureaus and request that the agency place a fraud alert in your file. Ask that the agency also insert a victim's statement asking that creditors call before opening any new accounts or changing existing accounts. Once one agency institutes an alert, the other two will routinely be notified and do the same. The credit bureaus will send copies of your credit report for your careful review to make sure no additional fraudulent accounts were opened in your name or unauthorized changes made to existing accounts.

### To report fraud:

Equifax- 800-525-6285 Experian- 888-EXPERIAN (397-3742) TransUnion- 800-680-7289

## 2) File a complaint with the FTC

This provides important information that can help track down and stop identity thieves. The FTC can also refer victim complaints to other appropriate government agencies and companies for further action. Obtain an ID Theft Affidavit by calling 877-IDTHEFT (438-4338) or visiting online at <https://www.ftccomplaintassistant.gov>.

## 3) Contact any creditors with whom your name has been used fraudulently to open account

These may include credit accounts with credit card companies, banks, stores, utilities, wireless phone service providers, or internet service providers. Creditors may ask you to fill out a fraud or theft affidavit, a form detailing your fraud claim. The FTC has blank, printable theft affidavits at [www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf](http://www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf).

## 4) Contact the creditors or lenders for any existing accounts that have been used fraudulently

Close any accounts that have been tampered with. Call the security or fraud departments of each company and follow up in writing. If you need to open new accounts, use a new password and PIN. If your ATM card or checks have been stolen or misused, close the account and ask your bank to notify the appropriate check verification companies.

## 5) File a police report

Many creditors and merchants require a detailed police report, called an Identity Theft Report, as proof of fraudulent activity. If you have trouble filing a report locally, contact the county or state police department. The identity theft report can be used to block fraudulent information from appearing on your credit report, ensure that debts do not reappear on your credit report, prevent a company from continuing to collect debts that result from identity theft, and place an extended fraud alert on your credit report.

For more information on how to prevent, fight, and cope with identity theft, contact DoD's Military OneSource at [www.militaryonesource.com](http://www.militaryonesource.com) or 800-342-9647.

## *THE TRAVELLER NEWSPAPER ARTICLE*

### CREDIT REPORTS – HOW TO GET FREE CREDIT REPORTS ONCE A YEAR

In modern society most people require credit to transact daily business. Therefore, a good credit rating is key to obtaining credit and obtaining favorable interest rates. Generally three nationwide credit reporting companies maintain information on your credit: they are Equifax, Experian and TransUnion. The Fair Credit Reporting Act (FCRA) requires that each of these companies provide you with one free copy of your credit report once every 12 months, but only upon your request. There is one centralized website, telephone number and mailing address to obtain these reports free.

Thus, you may request your free credit reports three ways:

1. on line at [annualcreditreport.com](http://annualcreditreport.com);
2. by telephone at 1-877-322-8228; or
3. by completing the Annual Credit Report Request Form and Mailing it to:  
Annual Credit Report Request Service. P.O. Box 105281, Atlanta, Georgia  
30348-5281.

You may ask all for all three companies' credit reports at the same time when making your request. You can also space out you requests over time to each company, but the companies will only provide you with one free credit report during a 12 month period. However, if you do not request your free credit reports through [annualcreditreport.com](http://annualcreditreport.com) in one of the three ways listed above, the three credit reporting companies may not provide you a credit report free and may charge you if you contact them directly.

These three credit reporting companies obtain data about how pay your bills from a variety of sources, so they may have different information and assessments of your credit. Usually it is best to obtain all three and compare them. You may use these reports to check the accuracy of the reports about you and to check to see if you are the victim of identity theft. If you seek a loan, the loan company will check these reports and use them as a guide to see what kind of credit risk you are and what rate of interest to charge you based upon that risk. Therefore, it is important to guard your credit information.

Should you need a will or have any questions regarding your legal matters, please make an appointment with an attorney at the Legal Assistance Office, (804) 765-1500.

BYLINE: The author, Mr. Kevin P. Fritz, is a Legal Assistance Attorney with the Legal Assistance Division, Office of the Staff Judge Advocate, CASCOM&SCOE, Fort Lee, Virginia.

