

Date of Hearing: June 24, 2019

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Monique Limón, Chair
SB 187 (Wieckowski) – As Amended April 22, 2019

SENATE VOTE: 38-0

SUBJECT: Rosenthal Fair Debt Collection Practices Act

SUMMARY: Clarifies that the definition of “consumer debt” in the Rosenthal Fair Debt Collections Practices Act (RFDCPA) includes mortgage debt. Removes the exception for attorneys in the definition of “debt collector.”

Specifically, **this bill:**

- 1) Clarifies, for purposes of the RFDCPA, that “consumer debt” includes a mortgage debt. It makes clear that the intent of the Legislature in so amending this definition is to clarify existing law.
- 2) Removes the exception for attorneys and counselors at law from the definition of “debt collector.”
- 3) Makes a series of nonsubstantive changes.

EXISTING LAW:

- 1) Regulates the collection of consumer debt under the Rosenthal Fair Debt Collections Practices Act, which generally prohibits deceptive, dishonest, unfair, and unreasonable debt collection practices by debt collectors and regulates the form and content of communications by debt collectors to debtors and others. (Title 1.6C of Part 4 of Division 3 of the Civil Code, Section 1788 et seq.)
- 2) 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 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, but does not include an attorney or counselor at law. (Civil Code, Section 1788.2)

FISCAL EFFECT: This bill is keyed nonfiscal.

COMMENTS:

1) **PURPOSE**

According to the author:

My bill, SB 187, would ensure that people with mortgage debt are given the exact same type of protections and rights as people who have any other type of debt. It is unfortunate that courts have had conflicting rulings on whether or not the definition of "consumer debt" under the California Fair Debt Collection Practices Act includes mortgage debt.

Without those protections debt collectors can contact people multiple times a day at any hour and even threaten to foreclose homes despite payments being paid on time. The Act was established by legislators with the purpose to ensure all consumers are protected from harassment and abusive debt collection. My bill makes it clear in statute that people with mortgage debt will be given the same protections and will be treated fairly. In addition, SB 187 removes the exception that an attorney is not subject to the enforcement provisions of the Rosenthal Act. There have been multiple reports from law organizations who have seen banks or debt collectors use law firms or attorneys to circumvent the protections given to people by the Act. People should be protected from abusive debt collection tactics regardless whether it is done by an attorney debt collector or a non-attorney debt collector.

2) BACKGROUND

The Rosenthal Fair Debt Collection Practices Act (RFDCPA) defines consumer debt as “money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.” The definitions do not specifically include the words “mortgage debt” which has led some courts to rule that mortgage debt is not covered by the Rosenthal Act.

Secondly, there have been multiple reported cases from organizations such as East Bay Community Law Center of solo practicing attorneys, landlord attorneys, and law firms that have harassed individuals for payment. Consumers should be protected from harassment regardless whether it is perpetrated by an attorney debt collector or a non-attorney debt collector.

3) COMMONSENSE PROTECTIONS

This bill would ensure that courts do not mistakenly exempt consumers who owe mortgage debt from commonsense protections, including prohibiting debt collectors from engaging in unscrupulous activities such as the use of violence or profanity, defamation, and the false representation of an attorney. To be clear, this bill does not affect the enforceability of amounts owed by a consumer on a mortgage debt – the consumer is still responsible for paying the amount owed. The bill also ensures that consumers are protected from harassment regardless whether it is perpetrated by an attorney debt collector or a non-attorney debt collector.

REGISTERED SUPPORT / OPPOSITION:

Support

Andrew S. Cho ALC
Asian Law Alliance
California Labor Federation, AFL-CIO
California Low-Income Consumer Coalition
Consumer Attorneys of California
Consumer Law Office of Robert Stempler
Deos Law

East Bay Community Law Center
Housing & Economic Right Advocates
Katharine & George Alexander Community Law Center
The Jake A. Walton Law Firm
Legal Aid Association of California
Neighborhood Legal Services of Los Angeles County

Opposition

None received.

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