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Chapter Bkg 74

COLLECTION AGENCIES

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History: Chapter Bkg 74 as it existed on December 31, 1965 was repealed, and a new chapter Bkg 74 was created effective January 1, 1966.

Bkg 74.01 Office requirements. (1) SHARED OFFICE SPACE. The office of a collection agency shall not be shared or have a common waiting room with a practicing attorney, justice of the peace, loan company, or located in a private residence unless the collection office is used solely for business purposes, has an outside entrance and can be isolated from the remainder of the residence. If other approved business is conducted in the same office as provided for in s. 218.04 (4) (b), Stats., the accounting records of such other business shall be kept separate from the accounting records of the collection agency.

(2) OFFICE HOURS. Every licensee shall maintain regular office hours on business days from Monday through Friday and must be open for business at least 3 hours each day. Whenever an office is not open for business at least 6 hours a day, or if the licensee maintains irregular office hours, a written notice must be filed with the office of the commissioner of banking setting forth the schedule of minimum office hours.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66; am. (2), Register, July, 1968, No. 151, eff. 8-1-68.

Bkg 74.02 Forms. (1) FORMS TO BE APPROVED. All agreements, contracts, listing sheets, acknowledgment forms, form letters, or any other forms whatsoever to be used by any licensee in conducting its business shall be submitted to the office of the commissioner of banking for its approval, and no such form or agreement shall be used until approved. A folder containing the file copy of all approved forms including the approved schedule of irregular office hours, if any, must be maintained in the licensed office in the order in which the forms were approved.

(2) FORM OF AGREEMENT WITH CREDITOR. Upon receipt of any account for collection, the licensee shall furnish the creditor or forwarder with an agreement, listing or acknowledgment, a duplicate or copy of which shall be kept in the office of the licensee. This agreement, listing or acknowledgment shall:

(a) State the date the account was received;

(b) Confirm the rate of charge and any other terms or conditions binding thereon. The licensee shall not charge a higher commission rate on interest or other fees collected than is charged on the principal amount

unless an agreement is executed by the creditor and the licensee authorizing such higher rate, with said rate being printed in red ink and in at least eight point type with the rest of the agreement form being printed in a contrasting color. The licensee, if so authorized, shall not retain said higher rate of charge until the principal amount listed as owing has been collected in full;

(c) List the accounts by name of debtor, principal amount and other charges to be collected, the amount or rate of authorized interest to be added and the date of last activity on the account.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66; am. (1), Register, July, 1968, No. 151, eff. 8-1-68.

Bkg 74.03 Remittance statement. (1) REMITTANCE STATEMENT TO BE FURNISHED EACH CREDITOR. Licensee shall remit money due to any and all creditors or forwarders within 30 days from the close of the month during which the collection was effected as provided in s. 218.04 (5) (a) 4, Stats. The remittance shall be accompanied by a statement setting forth:

(a) Date of remittance;

(b) Debtor's name;

(c) Date of collection and amount collected from each debtor which shall include interest and other charges (attorneys fees, court costs or suit fees if paid by or charged to the creditor are to be included as other charges);

(d) Distribution of money collected from each debtor including interest, if any, showing amount due licensee as commission and amount due creditor or forwarder;

(e) The number and amount of the remittance check.

(2) DUPLICATE COPY OF REMITTANCE STATEMENT TO BE RETAINED BY LICENSEE. A duplicate copy of each remittance statement furnished a creditor or forwarder shall be kept available in the office of the licensee and shall be filed by the month in which it was issued either alphabetically or by claimant number.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66; r. and recr. (1) (c), (d) and (2), Register, July, 1966, No. 127, eff. 8-1-66.

Bkg 74.04 Trust fund account. Each licensee shall deposit in a trust fund account in a local or approved bank promptly after collection, sufficient funds to pay all moneys due or owing all creditors or forwarders. Said trust fund account shall be used only for this purpose.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Bkg 74.05 Books and records. (1) ACCOUNTING RECORDS TO BE MAINTAINED. Every licensee shall maintain in the principal licensed office adequate accounting records, which shall include but not be limited to the following:

(a) A daily collection record or cash receipt journal in which all collections are recorded and allocated as to total collections, setting forth:

1. The amount credited to principal, interest, attorney's fees and court costs;

2. The amount due creditors or forwarders;

3. The amount retained as commission or commission paid to forwardees;

4. Paid directs reported and paid direct commissions received.

(b) A ledger record consisting of asset and liability accounts including a continuous record of all physical assets such as furniture, fixtures and office equipment on which personal property tax may be paid.

(c) A ledger record of income and expenses, which record must coincide with the annual report submitted in compliance with s. 218.04 (10), Stats.

(d) A record of each debtor's account shall be maintained consisting of the following:

1. The name and address of the debtor, creditor, forwarder or forwardee if the account has been forwarded;

2. The principal amount owing and, if available, the date of the last credit or debit;

3. The amount of interest, cost of legal action instituted, or other charges, if any, and a description thereof;

4. The amount and date of each payment made by the debtor allocating moneys paid to the amount owing, interest, costs and/or other charges;

5. The cost of any legal action instituted.

(e) A master alphabetical listing by name and address of every creditor or forwarder with whom the licensee engages in the business of collecting accounts.

(f) The numerically numbered check stubs corresponding with all trust account and operating account checks shall be maintained in the office of the licensee. Cancelled checks together with voided or unused checks (adequately explained) must be filed in numerical order after the bank statement has been reconciled each month.

(2) RECEIPT REQUIREMENT. Whenever a payment is received from a debtor, forwardee or other person, a receipt showing the date said payment was received shall be prepared and a duplicate copy shall be available at all times in the office of the licensee except when other positive evidence of a receipt is available.

(a) All receipts must be prepared at least in duplicate, be prenumbered by the printer and used in consecutive numerical order. The receipt shall show the name and address of the licensee, the amount and date paid, the name of the creditor or creditors, the allocation of moneys paid to principal, interest or costs, and the name or initials of the collector or person accepting the payment.

(b) The original receipt or an exact copy thereof must be furnished the debtor unless a payment is received where the debtor's personal check, cashier's check or a money order is received which in itself is evidence of payment.

(c) A duplicate copy of the consecutively numbered field and/or office receipt which the licensee must prepare for each payment received, including voided and cancelled receipts, shall be retained in numerical sequence in the office.

(d) If a collection is made outside of the office, the copy of the field receipt required to be given the debtor must be filed in the office in consecutive numerical order after the record of payment has been transferred to the office receipt required in par. (a).

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66; r. and recr. (1) (d) 3., 5., and (2), Register, July, 1966, No. 127, eff. 8-1-66.

Bkg 74.06 Disclosure of rates in advertising. If any mention of rates is made in any form of advertising or on any forms used by a licensee, the full rate or rates charged shall be stated.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Bkg 74.07 Licensee shall furnish report to creditor on written request. Every licensee shall furnish within 30 days after written request from the creditor or forwarder, a written report upon accounts received from such creditor or forwarder.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66.

Bkg 74.08 Procedure for return or cancellation of accounts. (1) CREDITOR MAY REQUEST RETURN OF ACCOUNTS. The written request of a creditor or forwarder for the return of any account not in the actual process of collection shall be complied with by the licensee in writing within a reasonable length of time, but not in any event to exceed 30 days; said cancellation and return shall consist of listing the account by name of debtor, the original amount of the account placed for collection, the uncollected balance due and the date of last payment by the debtor. In addition, all valuable papers furnished by the creditor or forwarder in connection with the account shall be returned.

(2) CANCELLATION AND RETURN OF ACCOUNTS AND ALL VALUABLE PAPERS UPON TERMINATION OF LICENSE. Whenever the license of a collection agency is terminated for any reason whatsoever, all accounts and any valuable papers which have been given to the agency in connection with any accounts placed with it for collection shall be returned to the person placing the account for collection within 5 days of the termination of said license unless upon written application an extension of time is granted by the office of the commissioner of banking. All agreements between the collection agency and the creditor or forwarder are automatically cancelled as of the date on which said license is terminated. If any of the accounts that have been placed for collection are in the hands of attorneys or others at the time of the termination of said license, such attorneys or others shall immediately be notified by the collection agency to thereafter correspond, remit and be solely responsible to the person placing the accounts with you for collection on all such accounts unless the creditor has authorized a successor or other licensee to continue to collect the accounts. In the case of death of the sole owner or a partner, all accounts shall be returned within a reasonable period of time, but in any event not to exceed 120 days.

(3) PROCEDURE FOR CANCELLING AND RETURNING ACCOUNTS WHEN LICENSE IS TERMINATED. Section 218.04 (6) (c), Stats., sets forth the procedure to be followed before discontinuing business. An affidavit must be

furnished the office of the commissioner of banking that s. 218.04 (6) (c) 1, 2 and 3, Stats., have been complied with. In addition to the affidavit, it is necessary within 10 days to furnish the office of the commissioner of banking with a copy of the letter to each creditor, forwarder or forwardee showing the name of the debtor, the original amount of the account placed with the agency for collection, the present uncollected balance, the date of last payment and if a remittance is due, the number and the amount of the remittance check. (Approved forms and procedures to be followed are to be obtained from the office of the commissioner of banking before the license is terminated.)

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66; am. (2) and (3) Register, July, 1968, No. 151, eff. 8-1-68.

Bkg 74.09 General. (1) COMPUTATION OF INTEREST AND OTHER CHARGES. Interest computed by the licensee on accounts where there is no definite amount contracted for should be limited to the amount permitted under ss. 138.04 and 138.05, Stats.

(2) COLLECT WIRES OR COLLECT TELEPHONE CALLS TO DEBTORS PROHIBITED. Collect wires or collect telephone calls to debtors are not permitted unless the collection agency identifies itself by having the telephone operator advise the debtor that the call is from a collection agency. A licensee may not charge the debtor a handling charge, mileage costs or other out-of-pocket expenses incurred in the collection of an account.

(3) EVIDENCES OF INDEBTEDNESS SIGNED BY DEBTOR. Any judgment note, mortgage or other instrument which the licensee may have the debtor sign must be payable to the order of the creditor or jointly to the order of the creditor and the collection agency. All such instruments must be completely filled in as to terms and conditions at the time the instrument is signed. If the instrument is made payable only to the order of the licensee, the licensee must then remit on the account to the creditor the same as if it had been paid in full.

(4) APPLICATION OF FUNDS WHERE THERE IS A DEBTOR-CREDITOR RELATIONSHIP. If a creditor has a debtor-creditor relationship with a licensee where he, as a creditor, has listed accounts with the licensee, for collection and also as a debtor has accounts listed with the licensee by other creditors against him for collection, collections effected in his behalf as a creditor may not be applied on accounts that he owes unless the licensee has a written authorization on file setting forth how the moneys collected are to be applied. A receipt and a remittance statement must be issued in connection with debtor-creditor accounts so that he, as a debtor, has a complete record of how moneys collected in his behalf as a creditor have been applied.

History: Cr. Register, December, 1965, No. 120, eff. 1-1-66; am. (1) Register, July, 1968, No. 151, eff. 8-1-68; r. (5), Register, August, 1978, No. 272, eff. 9-1-78.

Bkg 74.10 Annual report. (1) The annual report required by s. 218.04 (10) (a), Stats., shall be sworn to by the licensee, if he is an individual, or by a partner, director, manager or treasurer in its behalf if the licensee is a partnership, corporation, or incorporated association. The following information shall be furnished in addition to such information as shall be required of other businesses authorized to be conducted in the same office:

(a) *Schedule A. general information.* The information included under this schedule will be the location of the office and the nature of other business conducted in the office as well as the names and addresses of the officers, directors, partners, owner and collection personnel.

(b) *Schedule B. statement of financial condition.* The statement of financial condition shall contain a list of all assets, liabilities and net worth which shall be furnished on a form provided by the office of the commissioner of banking. The statement shall be as of the close of business on December 31 in the year for which the statement is furnished except where the licensee has written authorization to file a statement of a prior date, which shall not be before September 30 in the year for which the statement is furnished.

(c) *Schedule C. statement of receipts and expenditures.* This schedule will include a statement of receipts including all income and expenses of the agency and any other associated businesses authorized to be conducted in the same office with the collection agency. The net profit from the business shall also be shown.

(d) *Schedule D. statement of ownership and affidavit.* This schedule shall include a statement of ownership of the collection agency and an affidavit as to the veracity of the report.

(e) *Schedule E. new claimants or forwarders listed during the past year.* This schedule sets forth a listing of all new claimants or forwarders including the street address and the city and state in which the claimants reside.

(2) The above schedules are to be furnished only on forms provided by the office of the commissioner of banking.

History: Cr. Register, July, 1966, No. 127, eff. 8-1-66; am. (1) (b) and (2), Register, July, 1968, No. 151, eff. 8-1-68.

Bkg 74.11 Fair collection practice notice. (1) Within 5 days after the initial communication with a debtor a licensee shall, unless the initial communication is written and contains the following notice or the debtor has paid the debt, send the debtor the following notice in not less than 8 point boldface type:

> This collection agency is licensed by the Office of Commissioner of Banking, P.O.Box 7876, Madison, Wisconsin 53707.

This notice shall be typed or printed on either a collection notice or on the validation of any debt directed to the debtor by the licensee pursuant to Sec. 809 of the Federal Fair Debt Collection Practices Act.

(2) Where the notice required by sub. (1) is printed on the reverse side of any collection notice or validation sent by the licensee, the front of such notice shall bear the following statement in not less than 8 point boldface type:

> Notice: See Reverse Side for Important Information.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78, except (1) which is effective 2-1-79; am. (1), Register, July, 1983, No. 331, eff. 8-1-83.

Bkg 74.12 Use of alias. In any oral or written communication with a debtor, any collector, solicitor, licensee, person, employe or agent of a

collection agency may use a separate alias. However, any alias shall be registered with and approved by the office of commissioner of banking prior to use. The real name of a person using an alias will be available from the office of commissioner of banking. No collector, solicitor, licensee, person, employe or agent may have more than one alias. No change of alias may be authorized unless good cause is shown. When using an alias, persons shall also identify the agency which they represent using the name under which it is licensed to do business. A licensee may forward printed collection notices to a debtor which are unsigned. Violations of this rule are subject to s. 218.04 (5) and (7), Stats.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78; r. and recr. Register, February, 1988, No. 386, eff. 3-1-88.

Bkg 74.13 Unauthorized practice of law. No collector or other employe of a licensee shall in attempting to collect an account, engage in the practice of law. This includes but is not limited to the preparation of a summons or complaint or the appearance on behalf of any creditor, except when called as a witness by the plaintiff's attorney in open court, before any court including the clerk of any small claims court in an action on the debt or in garnishment proceedings. This rule does not prohibit the appearance of an owner of a non-corporate licensee in court for the purpose of obtaining judgment on a debt owed to the licensee directly.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78.

Bkg 74.14 Oppressive and deceptive practices prohibited. A licensee shall not engage in any oppressive or deceptive practices. In attempting to collect an alleged debt, a licensee shall not:

(1) Use or threaten force or violence to cause physical harm to the person, dependents or property of a debtor;

(2) Threaten criminal prosecution;

(3) Disclose or threaten to disclose information adversely affecting the debtor's reputation for credit worthiness with knowledge or reason to know that the information is false;

(4) Initiate or threaten to initiate communication with the debtor's employer prior to obtaining final judgment against the debtor, except as permitted by statute. This subsection does not prohibit a debt collector from communicating with the debtor's employer solely to verify employment status or earnings or where an employer has an established debt counseling service or procedure;

(5) Contact a debtor by telephone at the debtor's place of employment following a request or demand by the debtor that such collection efforts cease;

(6) Disclose or threaten to disclose to a person other than the debtor or the debtor's spouse information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information; but this subsection does not prohibit the disclosure to another person of information permitted to be disclosed to that person by statute;

(7) Disclose or threaten to disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing the fact that the debtor disputes the debt;

(8) Communicate with the debtor or a person related to the debtor with such frequency or at such unusual hours or in such a manner as can reasonably be expected to threaten or harass the debtor;

(9) Engage in other conduct which can reasonably be expected to threaten or harass the debtor or a person related to the debtor including conduct which violates the Federal Fair Debt Collection Practices Act;

(10) Use obscene, profane or threatening language in communicating with the debtor or a person related to the debtor;

(11) Claim or attempt to threaten to enforce a right with knowledge or reason to know that the right does not exist;

(12) Use a communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a government, governmental agency or attorney-at-law when it is not or any bogus letter ostensibly addressed to any governmental authority or attorney;

(13) Threaten action against the debtor unless like action is taken in regular course or is intended with respect to the particular debt;

(14) Mutilate any check or other writing tendered by a debtor before forwarding it or returning it to the customer;

(15) Enlist the aid of a neighbor or other third party to request that the debtor contact the licensee except a person who resides with the debtor or a third party with whom the debtor has authorized the licensee to place such requests. This subsection shall not apply to a call back message left at the debtor's place of employment which is limited to the licensee's telephone number and the collector's name.

History: Cr. Register, August, 1978, No. 272, eff. 9-1-78.

Bkg 74.15 Use of data processing. The records of licensees may vary if data processing procedures are adopted which will prevent the licensee from maintaining certain records as required in this chapter. Prior to being used the records and procedures shall be submitted to the office of commissioner of banking which may approve of the records to be maintained if adequate information is available for examination purposes.

History: Cr. Register, February, 1988, No. 386, eff. 3-1-88.

Bkg 74.25 Severability. History: Cr. Register, December, 1965, No. 120, eff. 1-1-66; r. under s. 13.93 (2m) (b) 16, Stats., Register, February, 1988, No. 386, eff. 3-1-88.