

Clearinghouse Rule 06-045

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS, DIVISION OF BANKING
ADOPTING RULES**

- 1 The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to
- 2 repeal and recreate ch. DFI—Bkg 74 relating to collection agencies.

Analysis Prepared by the Division of Banking

Statute(s) interpreted: ss. 218.04, 220.02(2) and 220.02(3), Stats.

Statutory authority: ss. 218.04(7)(d) and 227.11(2), Stats.

Related statute or rule: none.

Explanation of agency authority: Pursuant to ss. 218.04, 220.02(2) and 220.02(3), Stats., the department regulates collection agencies.

Summary of proposed rule: Administrative code provisions regarding collection agencies have not been substantially revised or updated since 1965. In the proposed rule out-dated provisions are removed, minor technical changes are made, and the remaining provisions are streamlined to reflect current practices. These provisions regard definitions, office requirements, office relocations and material changes, agreements and acknowledgments, remittance statements, trust fund accounts, books and records, disclosure of rates in advertising, furnishing reports to creditor on written request, procedures for return or cancellation of accounts, general matters, annual reports, fair collection practice notices, use of aliases, unauthorized practice of law, oppressive and deceptive practices and use of data processing.

Summary of and preliminary comparison with existing or proposed federal regulation: there is no existing or proposed federal regulation addressing the matters set forth in the proposed rule with the exception of acts such as the Fair Debt Collection Practices Act.

Comparison with rules in adjacent states: Michigan, Illinois and Indiana similarly regulates collection agencies. Iowa does not.

Summary of factual data and analytical methodologies: the department reviewed its regulatory practices and procedures, and met with industry groups to determine the necessary revisions.

Analysis and supporting documentation used to determine effect on small business: the rule revises or eliminates already existing requirements, and imposes no new substantial requirements or cost, thereby benefiting small business; therefore, the rule has no effect on small business.

Summary of Final Regulatory Flexibility Analysis: This proposed rule will have no adverse impact on small businesses.

Summary of Comments received by Legislative Review Committees: .

Agency Contact Persons

For substantive questions on the rule, contact Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707-7876, tel. (608) 266-0451. For the agency's internal processing of the rule, contact Mark Schlei, Deputy General Counsel, Department of Financial Institutions, Office of the Secretary, P.O. Box 8861, Madison, WI 53708-8861, tel. (608) 267-1705.

Pursuant to the statutory authority referenced above, the Department of Financial Institutions, Division of Banking adopts the following:

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- 3 SECTION 1. Chapter DFI—Bkg 74 is repealed and recreated to read:
- 4 **DFI-Bkg 74.01 Definitions.** In this chapter:
- 5 (1) "Actual process of collection" in s. DFI-Bkg 74.10 means: regularly receiving payments at
- 6 periodic intervals, or debtor contacted within last 30 days and promise of payment received, or
- 7 an account referred for legal actions where the collection agency has advanced legal costs. A
- 8 collection agency and its client may by written contract agree to a different actual process of
- 9 collection. This subsection first applies to contractual relationships entered into between a
- 10 collection agency and its client after March 1, 1993.
- 11 (2) "Active office" in s. 218.04 (4), Stats., includes meeting at least all of the following
- 12 minimum conditions:

13 (a) Shared office space which is open and staffed the minimum hours required by s. DFI-Bkg
14 74.02 (2).

15 (b) Staff person is available for service of process.

16 (c) Sufficient space to conduct examination of additional records to be produced to evidence
17 compliance with all rules and regulations;

18 (d) The collection agency license shall be displayed at the active office.

19 (3) "Division" means the division of banking.

20 (4) "Merger" means the business combination of 2 or more collection agencies under s. 180.1101
21 or 183.1201, Stats.

22 **DFI-Bkg 74.02 Office requirements.** (1)(a) SHARED OFFICE SPACE. Except as set forth in
23 par. (b), the licensed office of a collection agency shall not be shared or have a common waiting
24 room with a practicing attorney or a loan company or be located in a private residence. If other
25 approved business is conducted in the same office as provided for in s. 218.04 (4) (b), Stats., the
26 books and records of such other business shall be kept separate from the books and records of the
27 collection agency.

28 (b) A collection agency may share its licensed office with a practicing attorney if the attorney is
29 an employee of the collection agency. Such attorney shall not be exempt from this chapter or
30 from s. 218.04, Stats.

31 (2) OFFICE HOURS. Every licensee shall maintain regular office hours on business days from
32 Monday through Friday and shall be open for business at least 3 hours each day between the
33 hours of 9:00 a.m. and 5:00 p.m. Whenever an office is not open for business at least 6 hours a
34 day between the hours of 9:00 a.m. and 5:00 p.m., a written notice shall be filed with the division
35 setting forth the schedule of office hours.

36 **DFI-Bkg 74.03 Office relocations and Material Changes. (1) OFFICE RELOCATION.** A
37 licensee shall submit to the division written notice of the licensee's contemplated change of its
38 place of business to another location inside or outside of the municipality in which it is licensed.
39 The notice shall be submitted 30 days or more prior to the date of the contemplated change and
40 shall be accompanied by a fee of \$100. Upon approval of the new location, the division shall
41 issue an amended license, specifying the date thereof and the new location.

42 **(2) MATERIAL CHANGES.** A licensee shall notify the division of any material change to the
43 information provided in the licensee's original or renewal license application or provided in a
44 previous notice of change filed by the licensee with the division under this section. The notice
45 shall be in writing and, except in the case of a relocation, be received by the division within 10
46 days after the change. The licensee shall provide any additional information, data, and records
47 regarding the change to the division within 20 days after the division requests the information,
48 data or records. Any change that is subject to the notice requirement shall be subject to the
49 approval of the division. In reviewing the change or relocation, the division shall apply the same
50 criteria as the criteria for approval of an original license application. Except in the case of a
51 relocation, the division shall determine the cost of investigating and processing the change. The
52 licensee shall pay the division's cost within 30 days after the division demands payment.

53 **DFI-Bkg 74.04 Agreements and acknowledgments. (1) AGREEMENT WITH CREDITOR:**

54 Prior to accepting accounts for collection from a creditor, the licensee shall enter into a written
55 agreement with the creditor. The agreement shall do all of the following:

56 (a) Be executed and dated by both parties.

57 (b) Indicate whether the licensee is authorized to add interest, collection charges, or fees to the
58 accounts listed for collection and identify the interest rate, charge, or fee amount.

59 (c) Identify the licensee's rate of commission. The licensee may not charge a higher
60 commission rate on interest or other charges and fees collected than is charged on the principal
61 amount unless the agreement authorizes such higher rate. Licensee may not retain said higher
62 rate of charge until the principal amount listed as owing has been collected in full.

63 (d) List any other fees that the creditor may be charged.

64 (e) Not permit the collection agency to charge the creditor for returning any account to the
65 creditor.

66 (2) ACKNOWLEDGMENT. Upon receipt of any account for collection, the licensee shall
67 furnish the creditor or forwarder with an acknowledgment, a duplicate or copy of which shall be
68 kept in the office of the licensee. The acknowledgment shall list the accounts by name of debtor,
69 date the account was listed, and principal amount and other charges to be collected.

70 (3) An acknowledgement containing the information required by sub. (2) need not be sent to the
71 creditor or forwarder for each listing if the creditor or forwarder provides a written statement
72 indicating their desire not to receive the acknowledgment.

73 **DFI-Bkg 74.05 Remittance statement. (1) REMITTANCE STATEMENT TO BE**
74 **FURNISHED EACH CREDITOR.** Licensee shall provide a remittance statement and remit any
75 and all money due to any and all creditors or forwarders within 30 days from the close of the
76 month during which the collection was effected as provided in s. 218.04(5)(a)4., Stats. The
77 remittance statement shall set forth all of the following:

78 (a) Date of remittance.

79 (b) Debtor's name.

80 (c) Date of collection and amount collected from each debtor which shall include interest and
81 other charges. Attorneys fees, court costs or suit fees if paid by or charged to the creditor and

82 non-sufficient fund fees assessed by the creditor shall be included as other charges. Fees
83 permitted and collected pursuant to s. 74.11(2)(a) – (c) shall not be included as other charges.

84 (d) Distribution of money collected from each debtor including interest and non-sufficient fund
85 fees assessed by the creditor, if any, showing amount due licensee as commission and amount
86 due creditor or forwarder.

87 **(2) DUPLICATE COPY OF REMITTANCE STATEMENT TO BE RETAINED BY**

88 LICENSEE. A duplicate copy of each remittance statement furnished a creditor or forwarder
89 shall be available in the office of the licensee and shall be filed by the month in which it was
90 issued either alphabetically or by claimant number.

91 **DFI-Bkg 74.06 Trust fund account.** Each licensee shall deposit in a trust fund account in any
92 approved financial institution promptly after collection, sufficient funds to pay all moneys due or
93 owing all creditors or forwarders. Said trust fund account shall be used only for this purpose. A
94 licensee may maintain trust funds in an interest bearing savings account or instrument provided it
95 is identified as a "trust account". Sufficient funds shall be maintained in the trust account or trust
96 accounts to pay all moneys due or owing all creditors or forwarders. Sufficient funds shall be
97 maintained in or made available to the trust checking account on which remittance checks or
98 electronic debits are drawn or made to pay all checks and debits when presented. The licensee
99 shall have sufficient documentation from the trust account or trust accounts available to make an
100 adequate examination.

101 **DFI-Bkg 74.07 Books and records. (1) RECORDS TO BE MAINTAINED.** Every licensee
102 shall maintain in the principal licensed office adequate records which shall include but not be
103 limited to all of the following:

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

- 106 1. The amount credited to principal, interest, and other charges, such other charges to include
107 non-sufficient fund fees assessed by the creditor, any fees permitted and collected pursuant to s.
108 74.11(2)(a)-(c), attorney's fees and court costs;
- 109 2. The amount due creditors or forwarders;
- 110 3. The amount retained as commission or commission paid to forwardees;
- 111 4. Paid directs reported and paid direct commissions received;
- 112 5. The debtor's name;
- 113 6. The date of collection; and
- 114 7. The creditor's name or a code that identifies the creditor.

115 (b) A ledger record consisting of asset and liability accounts including a continuous record of all
116 physical assets such as furniture, fixtures and office equipment.

117 (c) A ledger record of income and expenses.

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

- 119 1. The name and address of the debtor, creditor, forwarder or forwardee if the account has been
120 forwarded;
- 121 2. The original amount listed, the principal amount owing and, if available, the date of the last
122 credit or debit;
- 123 3. The amount of interest, cost of legal action instituted, or other charges, if any, and a
124 description thereof; and
- 125 4. The amount and date of each payment made by the debtor allocating moneys paid to the
126 amount owing, interest, costs and/or other charges.

127 5. The current balance due.

128 (e) Check stubs or transaction registers that disclose all debits to the trust and operating
129 accounts. These stubs or transaction registers shall include all of the following:

130 1. The date of the check or electronic debit.

131 2. The name of the payee.

132 3. The amount of the check or electronic debit.

133 4. The check number, reference number or indication that there is no check number because
134 remittance was made electronically.

135 (f) A list of all outstanding trust accounts checks, sorted by account and the date the check was
136 written. The list shall include the date the check was written, the check number, the amount of
137 the check, and the payee.

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

140 (h) A record of all unused prepaid collection transmittals or listing forms sold, setting forth:

141 1. Name and address of the client or purchaser.

142 2. Date, number or quantity and price of transmittals or listing forms sold each client or
143 purchaser.

144 3. Number and date client or purchaser used transmittals or listing forms.

145 (i) After the bank statement has been reconciled each month, cancelled checks together with
146 voided or unused checks (adequately explained) shall be filed in numerical order. The division
147 may approve records and procedures which vary from these requirements if adequate
148 information is available for examination purposes.

149 (2) RECEIPT REQUIREMENT. Whenever a payment is received from a debtor, forwarder or
150 other person, a receipt showing the date said payment was received shall be prepared and
151 furnished to the debtor except when other positive evidence of a receipt is available.

152 (a) All manually prepared receipts shall be prepared at least in duplicate, be prenumbered by the
153 printer, be used in consecutive numerical order and be retained in numerical sequence in the
154 office.

155 (b) All receipts shall show the name and address of the licensee, the amount and date paid, the
156 name of the creditor or creditors, and the name or initials of the collector or person accepting the
157 payment.

158 **DFI-Bkg 74.08 Disclosure of rates in advertising.** If any mention of rates is made in any form
159 of advertising or on any form used by a licensee, the full rate or rates charged shall be stated as a
160 percentage or dollar amount. No collection agency shall advertise, print, display, publish,
161 distribute or broadcast or cause to be advertised, printed, displayed, published, distributed or
162 broadcast, in any manner, any statement or representation with regard to collection agency rates
163 which is false, misleading, or deceptive, or which omits to state material information with
164 respect to collection agency rates to make the statements therein not false, misleading or
165 deceptive.

166 **DFI-Bkg 74.09 Licensee shall furnish report to creditor on written request.** Every licensee
167 shall furnish within 30 days after written request from the creditor or forwarder, a written report
168 upon accounts received from such creditor or forwarder. The report shall include for each
169 account the name of the debtor, the account number, the original amount of the account placed
170 for collection, the uncollected balance due and the date of last payment by the debtor.

171 **DFI-Bkg 74.10 Procedure for return or cancellation of accounts. (1) CREDITOR MAY**
172 **REQUEST RETURN OF ACCOUNTS.** (a) The written request of a creditor or forwarder for
173 the return of any account not in the actual process of collection shall be complied with by the
174 licensee in writing within a reasonable length of time, but not in any event to exceed 30 days;
175 said cancellation and return shall consist of listing the account by name of debtor, the original
176 amount of the account placed for collection, the uncollected balance due and the date of last
177 payment by the debtor. In addition, all valuable papers furnished by the creditor or forwarder in
178 connection with the account shall be returned.

179 (b) A creditor may waive its right to have returned to it the valuable papers that were furnished
180 to the licensee when the account was listed. Such waiver must be in writing, be dated on or after
181 the date the creditor requests the return of its accounts under par. (a), and must be maintained in
182 the office of the agency.

183 **(2) CANCELLATION AND RETURN OF ACCOUNTS AND VALUABLE PAPERS UPON**
184 **TERMINATION OF LICENSE.** Whenever the license of a collection agency is terminated, all
185 accounts and any valuable papers which have been given to the agency in connection with any
186 accounts placed with it for collection shall be returned to the person placing the account for
187 collection within 5 days of the termination of the license unless upon written application an
188 extension of time is granted by the division. All agreements between the collection agency and
189 the creditor or forwarder are automatically cancelled as of the date on which the license is
190 terminated. All debtor payments received after the date on which the license is terminated shall
191 be immediately forwarded in full to the applicable creditor without the collection agency
192 retaining any fee or commission. If any of the accounts that have been placed for collection are
193 in the hands of attorneys at the time of the termination of the license, such attorneys shall

194 immediately be notified by the collection agency to thereafter correspond, remit and be solely
195 responsible to the person placing the accounts with the collection agency unless the creditor has
196 authorized a successor or other licensee to continue to collect the accounts. In the case of death
197 of the sole owner or a partner, all accounts shall be returned within a reasonable period of time,
198 but in any event not to exceed 120 days.

199 **(3) PROCEDURE FOR CANCELING AND RETURNING ACCOUNTS WHEN LICENSE IS**
200 **TERMINATED.** Section 218.04 (6) (c), Stats., sets forth the procedure to be followed before
201 discontinuing business. An affidavit shall be furnished to the division that s. 218.04 (6) (c) 1., 2.
202 and 3., Stats., have been complied with. In addition to the affidavit, it is necessary within 10
203 days to furnish the division with a copy of the letter to each creditor, forwarder or forwarder
204 showing the name of the debtor, the original amount of the account placed with the agency for
205 collection, the present uncollected balance, the date of last payment and if a remittance is due,
206 the number and the amount of the remittance check. (Approved forms and procedures to be
207 followed are to be obtained from the division before the license is terminated.)

208 **(4) WAIVER OF CANCELLATION AND RETURN OF ACCOUNTS.** (a) *Waiver.* The
209 division may waive the requirements of subs. (2) and (3) under any of the following
210 circumstances:

- 211 1. Two or more collection agencies licensed under s. 218.04, Stats., merge into one collection
212 agency under the license of one of those agencies, and the licenses of the nonsurviving agencies
213 are terminated on the effective date of the merger.
- 214 2. An agency licensed under s. 218.04, Stats., for at least the 3 years prior to the purchase
215 purchases 100% of the listed accounts from another collection agency licensed under s. 218.04,

216 Stats., and the agency from which the accounts are purchased terminates its license on the date of
217 the purchase.

218 (b) *Procedure for waiver.* Waiver under this section shall be effective only upon completion of
219 all of the following:

220 1. The request for waiver is submitted in writing to the division in a form prescribed by the
221 division accompanied by a fee prescribed by the division.

222 2. The request for waiver is received by the division at least 45 days before the effective date of
223 the merger or purchase of assets under par. (a).

224 3. Written notice of approval of the request for waiver is issued by the division.

225 (c) *Notice.* At least 30 days prior to the merger or purchase of assets under par. (a), the
226 collection agencies whose licenses are being terminated shall notify, in a form approved by the
227 division, all persons who have listed accounts with those agencies of the merger or purchase of
228 assets. The division may rescind any waiver under this section for failure to give the notice.
229 Notice is not required if the merger or purchase of assets is pursuant to an order issued by the
230 division pursuant to s. 218.04 (8) or (9m), or s. 220.04 (9), Stats.

231 (d) *Discontinuing operations.* Collection agencies merging or purchasing assets and receiving
232 the waiver under this section shall not be considered to be discontinuing operations under s.
233 218.04 (6) (c), Stats.

234 **DFI-Bkg 74.11 General. (1) COMPUTATION OF INTEREST AND OTHER CHARGES.**

235 Interest computed by the licensee on accounts where there is no definite amount contracted for
236 should be limited to the amount permitted under ss. 138.04 and 138.05, Stats.

237 **(2) FEES.** Except as set forth in pars. (a) through (d) and s. DFI—Bkg 74.11(8), a licensee may
238 not charge the debtor any fee, handling charge, mileage costs or other out-of-pocket expenses

239 incurred in the collection of an account. In no case may a licensee divide a debtor's payment to
240 increase the fees. The fees permitted under par. (c) may only be assessed if the fee is disclosed
241 to the debtor prior to the transaction being processed and the debtor is not required to make
242 payment via the method described therein.

243 (a) Actual charges assessed by a financial institution on a check returned to the licensee for any
244 reason may be added to the account of the debtor provided the charge is not the result of a
245 licensee prematurely depositing a post-dated check.

246 (b) Actual charges assessed by a financial institution on an Automated Clearing House
247 transaction reversed for any reason may be added to the account of the debtor provided the
248 charge is not the result of a licensee debiting the debtor's account prematurely, for an incorrect
249 amount, or without proper authorization.

250 (c) A fee not to exceed the lesser of \$25 or 3% of the payment amount, not including the fee,
251 may be added to the account of the debtor when the debtor makes a payment using a credit card.

252 (d) A licensee may serve process on a debtor and may assess a charge for service of process
253 costs not exceeding those assessed by the sheriff of the county in which process is served.

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

260 **(4) APPLICATION OF FUNDS WHERE THERE IS A DEBTOR-CREDITOR**

261 **RELATIONSHIP.** If a creditor has a debtor-creditor relationship with a licensee where he or

262 she, as a creditor, has listed accounts with the licensee, for collection and also as a debtor has
263 accounts listed with the licensee by other creditors against him or her for collection, collections
264 effected in his or her behalf as a creditor may not be applied on accounts that he or she owes
265 unless the licensee has a written authorization on file setting forth how the moneys collected are
266 to be applied. A receipt and a remittance statement shall be issued in connection with debtor-
267 creditor accounts so that he or she, as a debtor, has a complete record of how moneys collected
268 in his or her behalf as a creditor have been applied.

269 **(5) AUTHORIZATION TO CONSOLIDATE.** An authorization to consolidate under s.
270 218.04(9j), Stats., shall be in writing and shall include all of the following:

271 (a) The authorization of the creditor.

272 (b) The name of the licensee.

273 (c) The name of the debtor.

274 (d) The amount of the account the licensee proposes to consolidate.

275 (e) If the creditor has listed with the licensee more than one account for the debtor, an account
276 number, date of service or other brief description of the account.

277 (f) A statement as to how the amount of each payment received for a combined account will be
278 apportioned to the creditors.

279 (g) If payments will be apportioned pursuant to the discretion of either the licensee or the
280 attorney of record, a statement indicating the discretion to apportion.

281 **(6) COLLECTION NOTICES.** Unless mailed in the creditor's name, every collection notice
282 mailed or delivered by a licensee shall contain the collection agency's licensed name, mailing
283 address, and telephone number, both as part of the letterhead and on the portion of the collection
284 notice designed to be returned to the agency with the debtor's communication or payment.

285 (7) PAID OR SETTLED IN FULL RECEIPTS. After a debt has been paid or settled in full, and
286 upon written request by the debtor, a collection agency shall provide to the debtor a written
287 statement or receipt that the debt has been paid or settled in full. Such statement shall be
288 provided within ten business days after request by the debtor and shall be provided free of
289 charge.

290 (8) PAYMENT HISTORIES. For any account that has not been paid or settled in full and for
291 any account that has been paid or settled in full within 24 months of the request, a collection
292 agency shall provide the debtor with a written statement of the debtor's payments for as long as
293 the collection agency has had the account. The statement shall be provided to the debtor within
294 ten business days after the debtor makes a written request. The statement shall include the
295 debtor's name, the creditor's name, the amounts paid, the dates on which payments were
296 received, the allocation of money to principal, interest, court costs, attorney fees, and other fee or
297 costs, if applicable, and the current balance due. Account statements shall be provided upon
298 request without charge once during any twelve (12) month period. If additional statements are
299 requested, they shall be provided upon payment of a fee not to exceed \$5.00 per statement.

300 (9) OVERPAYMENTS BY CONSUMERS. If a consumer's account is overpaid, and there are
301 no other accounts for that consumer listed with the collection agency, the collection agency is
302 not required to issue a refund of the overpayment to the debtor if the amount of the overpayment
303 is \$5 or less. If there is another account for that consumer listed with the collection agency, the
304 collection agency shall, regardless of the amount, either refund the overpayment to the debtor or
305 apply the overpayment to the other account. If a refund is required, it shall be made within 30
306 days from the close of the month during which the payment was received.

307 **DFI-Bkg 74.12 Annual report.** With the exception of the balance sheet and income statement,
308 all portions of the annual report required by s. 218.04(10)(a), Stats., shall be completed as of the
309 close of business on December 31 in the year for which the annual report is furnished. The
310 licensee may, if written authorization has been granted to the licensee by the division, file a
311 balance sheet and income statement for a date prior to December 31, but not before September
312 30 in the year for which the report is furnished.

313 **DFI-Bkg 74.13 Fair collection practice notice.** (1) Unless the initial communication is written
314 and contains the following notice or the debtor has paid the debt, a licensee shall send the debtor
315 the following notice within 5 days after the initial communication with a debtor: "This collection
316 agency is licensed by the Division of Banking, P.O. Box 7876, Madison, Wisconsin 53707."
317 This notice shall be in at least 8 point type and shall be typed or printed on either a collection
318 notice or on the validation of any debt directed to the debtor by the licensee pursuant to Section
319 809 of the Federal Fair Debt Collection Practices Act.

320 (2) Where the notice required by sub. (1) is printed on the reverse side of any collection notice or
321 validation sent by the licensee, the front of such notice shall bear the following statement in not
322 less than 8 point type: "Notice: See Reverse Side for Important Information."

323 **DFI-Bkg 74.14 Use of alias.** In any oral or written communication with a debtor, any collector
324 or solicitor may use a separate alias. Such alias shall include a first and last name and shall be
325 registered with and approved by the division prior to use. No collector or solicitor may have
326 more than one alias. No change of alias may be authorized unless good cause is shown.
327 Collectors or solicitors employed by a licensee may not use the same alias. A licensee may
328 forward printed collection notices to a debtor which are unsigned.

329 **DFI-Bkg 74.15 Unauthorized practice of law.** (1) Except as set forth in sub. (2), no collector
330 or other employee of a licensee may in attempting to collect an account, engage in the practice of
331 law. This includes but is not limited to the preparation of a summons or complaint or the
332 appearance on behalf of any creditor, except when called as a witness by the plaintiff's attorney
333 in open court, before any court including the clerk of any small claims court in an action on the
334 debt or in garnishment proceedings. It is not considered the practice of law for an employee of a
335 licensee to prepare a summons or complaint under the direction of an attorney which will
336 subsequently be signed and filed by the plaintiff's attorney. This section does not prohibit the
337 appearance of an owner or officer of a licensed collection agency in court for the purpose of
338 obtaining judgment on a debt owed to the licensee directly.

339 (2) Sub. (1) shall not apply to an attorney who is an employee of the collection agency.

340 **DFI-Bkg 74.16 Oppressive and deceptive practices prohibited.** A licensee shall not engage in
341 any oppressive or deceptive practices. In attempting to collect an alleged account, bill or other
342 indebtedness, a licensee shall not:

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

345 (2) Threaten criminal prosecution;

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

348 (4) Initiate or threaten to initiate communication with the debtor's employer prior to obtaining
349 final judgment against the debtor, except as permitted by statute. This subsection does not

350 prohibit a debt collector from communicating with the debtor's employer solely to verify

351 employment status or earnings or where an employer has an established debt counseling service
352 or procedure;

353 (5) Contact a debtor by telephone following a request or demand by the debtor that such
354 collection efforts cease;

355 (6) Disclose or threaten to disclose to a person other than the debtor or the debtor's spouse
356 information affecting the debtor's reputation, whether or not for credit worthiness, with
357 knowledge or reason to know that the other person does not have a legitimate business need for
358 the information;

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

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

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

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

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

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

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

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

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

383 (16) Make collect telephone calls to debtors.

384 **DFI-Bkg 74.17 Use of data processing. (1) SYSTEMS APPROVAL.** The division may
385 approve data processing records and procedures which vary from the requirements of this
386 chapter if adequate information is available for examination purposes.

387 (2) SYSTEMS BACK-UP. Back-up of data entries is to be made on a daily basis and back-up of
388 all records on the system is to be made once each week. All systems back-up tapes or disks are
389 to be stored for safe keeping at a site away from the office of the licensee. The records being
390 maintained shall be verifiable at time of examination.

391 **Effective date.** This rule takes effect as provided in s. 227.22 (2) (intro.), Stats.

Dated: _____

Agency: _____

Michael J. Mach, Administrator
Department of Financial Institutions
Division of Banking