

ORDER OF THE DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKING

The Wisconsin Department of Financial Institutions, Division of Banking proposes an order to amend s. DFI—Bkg 74.08(2), and create ss. DFI—Bkg 74.001(3) and DFI—Bkg 74.08(4) relating to procedures for the cancellation and return of certain collection agency accounts.

Analysis Prepared by the Department of Financial Institutions, Division of Banking:

Analysis: To amend s. DFI—Bkg 74.08(2), and create ss. DFI—Bkg 74.001(3) and DFI—Bkg 74.08(4). Statutory authority: ss. 218.04(7)(d) and 227.11(2), Stats. Summary: Currently a collection agency must cancel and return all accounts when a license is terminated for whatever reason. However, current rules do not contemplate a merger between department licensees. Corporate merger statutes allow for the transition of the duties and obligations of the merged entity to the surviving entity. Allowing the transfer of all accounts accomplishes this. The rule also allows, under certain circumstances, a licensed collection agency to purchase the listed accounts of another agency. Accounts would not need to be cancelled and returned in these circumstances. Agency person to be contacted for substantive questions and responsible for agency's internal processing: Michael J. Mach, Administrator, Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, Wisconsin 53707-7876.

SECTION 1. DFI-Bkg 74.001 (3) is created to read:

DFI-Bkg 74.001 (3) “Merger” means the business combination of two or more collection agencies under s. 180.1101 or 183.1201, Stats.

SECTION 2. DFI-Bkg 74.08 (2) is amended to read:

DFI-Bkg 74.08 (2) CANCELLATION AND RETURN OF ACCOUNTS AND 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 the license unless upon written application an extension of time is granted by ~~the office of the~~ administrator of the division of banking. All agreements between the collection agency and the creditor or forwarder are automatically cancelled as of the date on which the 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 the 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 the collection ~~on all such accounts~~ agency 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.

SECTION 3: Section DFI – Bkg 74.08 (4) is created to read:

DFI—Bkg 74.08 (4) WAIVER OF CANCELLATION AND RETURN OF ACCOUNTS. (a) *Waiver.* The administrator of the division of banking may waive the requirements of s. DFI—Bkg 74.08 (2) and (3) under any of the following circumstances:

1. Two or more collection agencies licensed under s. 218.04, Stats., merge into one collection agency under the license of one of those agencies, and the licenses of the nonsurviving agencies are terminated on the effective date of the merger.

2. An agency licensed under s. 218.04, Stats., for at least the 3 years prior to the purchase purchases 100% of the listed accounts from another collection agency licensed under s. 218.04, Stats., and the agency from which the accounts are purchased terminates its license on the date of the purchase.

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

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

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

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

(c) *Notice.* At least 30 days prior to the merger or purchase of assets under s. DFI—Bkg 74.08 (4)(a), the collection agencies whose licenses are being terminated shall notify, in a form approved by the division, all persons who have listed accounts with those agencies of the merger or purchase of assets. The administrator of the division of banking may rescind any waiver under this section for failure to give the notice. Notice is not required if the merger or purchase of assets is pursuant to an order issued by the division pursuant to s. 214.08 (8) or (9m), or 220.04 (9), Stats.

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

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2) (intro.), Stats.

Dated: _____

Agency: _____

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