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History: Chapter Bkg 74 as it existed on December 31, 1965 was repealed, and a new chapter Bkg 74 was created effective January 1, 1966.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 section 218.04 (4) (b), Wis. 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 banking department setting forth the schedule of minimum office hours.

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

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 banking department 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.

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 section 218.04 (5) (a) 4, Wis. Stats. The remittance shall be accompanied by a statement setting forth:

(a) Date of remittance;

(b) Debtor's name;

(c) Amount collected from debtor which shall include interest and other charges;

(d) Distribution of money collected 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 filed in the same manner as cancelled checks are filed for at least 6 years.

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

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 section 218.04 (10), Wis. 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 or other charges, if any, authorized by the creditor 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. A record of any legal action instituted. Said record to be maintained in a contrasting colored ink.

(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) MINIMUM RECEIPT REQUIREMENT. Whenever a payment is received from a debtor, forwardee or other person, a receipt shall be prepared except when other evidence of a receipt is available.

(a) 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. The original receipt or an exact copy thereof must be furnished the debtor except when the debtor's personal check, cashier's check or money order is received by mail.

(b) 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, the remaining balance due and the name or initials of the collector or person accepting the payment.

(c) 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 (b) above.

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

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 banking department. 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), Wis. Stats., sets forth the procedure to be followed before discontinuing business. An affidavit must be furnished the banking department that section 218.04 (6) (c) 1, 2 and 3 have been complied with. In addition to the affidavit, it is necessary within 10 days to furnish the banking department 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 banking department before the license is terminated.)

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

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 sections 115.04 and 115.05, Wis. 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.

(5) USE OF DECEPTIVE FORMS OR PROCEDURES PROHIBITED. The use of deceptive means or representations to collect or attempt to collect a debt or the use of any collection letter which simulates a summons, complaint, court process or which purports to be from any state, county, local or government authority and the use of any bogus letters ostensibly addressed to any state, county, local or government authority or attorney are prohibited.

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

Bkg 74.25 Severability. The provisions of this order are severable and if any provision is held invalid, the invalidity shall not affect any other provision.

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