

COMMISSIONER OF BANKING

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1, 2 and 3 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 forwarder 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, 30 West Mifflin, Madison,
Wisconsin 53703.

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. This subsection shall be effective on the first day of the 6th month following its publication in the Wisconsin Administrative Register.

(2) Where the notice required by subsection (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.

Bkg 74.12 Use of alias or pseudonym prohibited. In oral or written communication with a debtor, collectors shall identify themselves by their birth given surname, their married name or a surname composed of their birth given and married names. An alias or pseudonym may not be

Register, August, 1978, No. 272

used. They shall also identify the agency which they represent by the name in which it is licensed to do business. A licensee may forward printed collection notices to a debtor which are unsigned.

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

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 74.25 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.