

CHAPTER 2. COLLECTION AGENCY LICENSING

001. DEFINITIONS

For purposes of Chapter 2 of these regulations:

001.01. Solicitor means anyone actively engaged in contacting creditors or prospective clients for the purpose of selling the collection agency's services and/or anyone collecting on accounts once referred or assigned to a licensed collection agency, solicitor does not mean anyone actively engaged solely in office clerical work for an agency.

001.02. Soliciting means acquiring, or attempting to acquire through advertising or other means, accounts for collection from clients located or doing business in Nebraska.

001.03. Sworn complaint means a written complaint which is notarized or otherwise legally authenticated by oath or affirmation.

001.04. Board means the Nebraska Collection Agency Licensing Board.

001.05. Act means the Nebraska Collection Agency Licensing Act.

001.06. Manager means any employee or owner of a collection agency with comprehensive supervisory authority and responsibilities with the agency; manager does not mean or include those with only limited supervisory authority or responsibilities.

001.07. Application means an application submitted through the Registry in a format approved by the Board.

001.08. Registry means the Nationwide Mortgage Licensing System as defined in Neb. Rev. Stat. § 45-602(4).

002. MEETINGS

002.01. Meetings of the Board will be called by the Secretary of State. Notice for meetings will be given and meetings will be held pursuant to Nebraska Open Meetings Act.

003. APPLICATIONS

003.01. Each application to be considered by the Board will be submitted through the Registry.

003.02. Applications submitted to the Board will contain the information provided below:

003.02A Initial Application for Collection Agency License

003.02A1. Before being considered by the Board, every application for a collection agency license will include the following information and meet the following:

003.02A1i. All questions on the application form(s) will be answered, unless otherwise noted on the form.

003.02A1ii. All licensing and investigation fees will be paid in advance.

003.02A1iii. All instruments used for payments of licensing and investigation fees other than cash will have been paid by the institution they were drawn upon.

003.02A1iv. For out of state applicants already doing business outside Nebraska, provide a list of ten customers for reference purposes. If the applicant does not have ten customers, the applicant will provide as many as it currently services.

003.02A1v. Personal references for individual and partnership applicants.

003.02A1vi. If the applicant is a corporation, limited liability company, or other business entity, a copy of their articles of incorporation, certificate of organization, or other formation document and the name and address of their resident agent.

003.02A1vii. If the applicant is a corporation, limited liability company, or other business entity, the Board will verify that the entity is in good standing to conduct business in the state of Nebraska.

003.02A1viii. Financial statement of the corporation or business.

003.02A1ix. A bond in the amount specified by the Act.

003.02A1x. The names and aliases of all solicitors to be initially employed by the agency.

003.02A2. An applicant has ninety (90) days after notice that an application is incomplete to complete their application by providing all necessary documents, information, and fees specified. If the application is not completed within that time, the application will be null and void and the applicant will then need to reapply for licensure, including payment of all fees.

003.02A3. The Board may request any additional information it deems necessary and relevant to the consideration of the applicant's qualifications to conduct collection agency business in this state.

003.02A4. The Board may investigate and verify any information contained in an application.

003.02B. Application for Renewal of Collection Agency License:

- 003.02B1. The date of the application.
- 003.02B2. The type of business organization.
- 003.02B3. The name of the agency.
- 003.02B4. The agency owner(s).
- 003.02B5. The agency's business street address.
- 003.02B6. The agency's telephone and fax numbers.
- 003.02B7. The name and street address of the agency's Nebraska office.
- 003.02B8. The name and street address of the agency's contact person for Correspondence.
- 003.02B9. The name and street address of the agency's contact person for complaints.
- 003.02B10. The name(s) and street address(es) of the agency's general manager(s).
- 003.02B11. The agency's trade names and "doing business as" names.
- 003.02B12. The name and title of the person completing the application.
- 003.02B13. An original agency bond or continuation certificate in the amount specified by the act submitted.
- 003.02B14. A statement that the licensee is maintaining records of all consumer payments pursuant to section 007.04.
- 003.02B15. A statement regarding any disciplinary actions taken against the licensee since the date of last renewal.

003.02C. Application for and Renewal of Solicitor's certificate:

- 003.02C1. The name of the solicitor.
- 003.02C2. The date of the solicitor's employment with the agency.
- 003.02C3. Any aliases used by the solicitor.

003.02D. Application for and Renewal of Branch Office Certificate:

- 003.02D1. The date of application.
- 003.02D2. The name of the branch office.
- 003.02D3. The street address and telephone number of the branch office.

004. SOLICITORS' CERTIFICATE FORMS

004.01. Solicitors' certificates become null and void upon the lapse, non-renewal, or revocation of the license of the agency using the solicitor as its employee or agent, or upon the termination of the solicitor's employment with the agency they work for.

004.02. The licensee will notify the Board in writing within 90 days upon the termination of employment of an employee holding a solicitor's certificate.

004.03. The licensee will provide an alphabetical list of new employee(s) which are soliciting or collecting on accounts in Nebraska within 90 days from the date of hire. The list will contain the name(s) of the employee(s) and any alias used along with the date of hire and the solicitor's fee.

005. LICENSES

005.01. Upon any of the following changes, the licensee will notify the Board in writing of such change within thirty (30) days after its occurrence:

005.01A. Change of business name or address, including change of Nebraska office name or address.

005.01B. Any changes in the managers or executive officers of a licensed collection agency will be reported to the board in writing. Such report will include:

005.01B1. The name and residential street address of each new manager or executive officer.

005.01B2. The work history and qualifications of each new manager or executive officer.

005.01C. Change in ownership of ten or more percent but less than fifty percent of the corporate stock or ownership interest if licensee is a corporation, limited liability company, or other business entity.

005.01C1. The notice required in section 005.01C shall include a list of all owners holding shares or ownership interests in the agency along with the percentage of interest held.

005.02. Licenses are not transferable. Before purchasing a currently licensed collection agency the prospective owner must be licensed. In addition, the following changes require a new license application:

005.02A. For a sole proprietorship or partnership, any change in the persons owning the collection agency.

005.02B. For a corporation, limited liability company, or other business entity any change of ownership of fifty percent or more of the stock or ownership interest in any one transaction or a cumulative change of ownership of fifty percent or more from the date of the issuance of the license or from the date of the latest renewal of the license.

005.02C. Any change of ownership structure, including but not limited to a change to or from a sole proprietorship, partnership, limited liability company, or corporation.

005.02C1. In the case of a change of ownership structure, the licensee will not need to submit the following:

005.02C1i. Investigation fee

005.02C1ii. If there has been no change in any of the documentation on file with the Board:

1. Officer Interrogatories
2. List of branch offices
3. List of solicitors

005.03. Upon the termination of a license by revocation, expiration, denial, or surrender, the licensee must immediately cease collection activities. All client accounts are to be returned to the clients within forty-five (45) days unless the licensee has written authorization from the client to transfer or assign the account to another collection agency for collection. No later than the end of the forty-five day period, the licensee will file a notarized affidavit with the Board stating its compliance with this rule and providing the names and addresses of all clients for whom it was attempting to collect debts.

All consumer payments received after the revocation, expiration, or surrender of a license will be immediately forwarded in full to the applicable client without the licensee's retention of any fee or commission.

This rule does not apply to any license voluntarily surrendered in conjunction with the simultaneous issuance of a new license due to any of the changes listed in section 005.02

006. RENEWAL OF AGENCY LICENSE

006.01. A license will only be renewed if the license renewal form along with the appropriate fees and evidence of bond or continuance of current bond in the proper amount is submitted on or prior to December 31 of each year and if the agency is a corporation, limited liability company, limited partnership, or limited liability partnership it is in good standing to do business in Nebraska.

006.02. Every renewal application received by the Board after the December 31 deadline will be considered as an initial license application. Such application will not be considered until the proper application and investigation fees have been paid.

007. INVESTIGATIONS AND FINANCIAL RECORDS

007.01. The Board may verify any and all information received by the Board pursuant to a license or certificate application, complaint, or renewal, by phone, correspondence, or personal interviews conducted by members of the Board or employees or agents of the Board at the direction of the Board. Board members and employees or agents of the Board may be reimbursed for actual and necessary expenses associated with such investigations.

007.02. The Board may request that anyone being investigated pursuant to a license application, complaint, or renewal personally appear before the board to answer questions and concerns related to the application, complaint, or renewal.

007.03. The Board may require a licensee to submit a verified financial statement for examination at any time. The Board may require the verified financial statement be prepared using Generally Accepted Accounting Principles (GAAP) and verified, reviewed, or audited by an independent accountant or Certified Public Accountant.

007.04. Licensees will maintain a record of all collection payments for two (2) years following the date the payment was received. Records of collection payments will include the consumer's or business's name, the client's name, the amounts paid, the dates on which payments were received, the allocation of each payment to, as applicable, principal interest, court costs, attorney fees, other costs, the interest rate, the current balance due, and the date of deposit of the collection payment to the applicable bank account.

008. FAIR DEBT COLLECTION PRACTICES ACT

008.01. The Board will inform each applicant for a collection agency license of the existence of Federal Fair Debt Collection Practices Act. (15 U.S.C. sec. 1692 et. seq.) and will inform each applicant how they can acquire a copy of the Federal Act.

009. MAINTENANCE OF A REGULAR OFFICE IN NEBRASKA

009.01. Failure of a collection agency to maintain a regular office in the state is grounds for revocation of license pursuant to the procedures set forth in these rules and regulations and in the Act.

009.02. The minimum standards for a regular office are a physical location where a manager, officer, employee or agent of the agency maintains regular business hours or other hours as posted in public view at the location. Such office will have actual document records or access to electronically stored document records of all collections and claims involving clients or debtors in the state being handled by the licensee.

009.03. The Board may verify the existence of a regular office for a particular collection agency upon written or verbal notification by any party alleging that such an office does not meet the standards of this section.

010. REVOCATION OR SUSPENSION OF AGENCY LICENSE OR SOLICITOR'S CERTIFICATE.

010.01. The Board may, upon an affirmative vote of the majority of the members of the Board and after its own investigation, and will, upon sworn complaint of any person or client of a licensee, cite the licensee or solicitor to appear before it at a time and place as set forth in such citation, to show cause as to why such license should not be suspended or revoked. Such citation will be in writing and set forth the exact charges against the licensee or solicitor. The citation will be served upon the licensee or solicitor at least twenty days prior to the hearing in the same manner that summons of the district courts are served. If the citation is against a solicitor, a true copy of the citation will also be served upon the licensee under whose license the solicitor's certificate was issued.

010.02. In preparation for and the conduct of such hearing the Board may issue subpoenas to require the attendance and testimony of witnesses, the production of any pertinent records, papers, books and documents, may administer oaths, examine witnesses, and take any evidence it deems pertinent to a proper determination of the charge. The party against whom the citation has been issued has the right to obtain from the Secretary of State subpoenas for such witnesses the party may desire to have at such hearing. Depositions may be taken and used at such hearings in the same manner as they are taken and used in the district courts of this state. Witnesses so subpoenaed will receive the same fees as witnesses in the district courts of this state.

010.03. The Board will record the testimony given at the hearing and maintain a file containing such testimony as well as a record of all witnesses who appeared and all documents or items offered as exhibits.

010.04. After such hearing the Board will approve by a vote of a majority of its members a statement of its findings in writing and signed by the Secretary of State. If the Board finds that the cited licensee or solicitor has failed to comply with the Act, or failed to comply with the general intent and purposes of the Act, the Board may revoke such license or certificate, or suspend such license or certificate for a specified time. A certified copy of the findings will be served upon the cited licensee or solicitor by certified mail within five days of the issuance of such findings.

010.05. The Board may make the reinstatement of a suspended license contingent upon satisfactory evidence being produced that the suspended licensee or certificate holder has acted to remedy the situation or action which was cause for the suspension or has taken steps to ensure that the situation or action does not re-occur. Any such requirement will be included in the findings of the Board in addition to such revocation or suspension.

011. APPEALS

011.01. Appeal from a final decision of the Board on any application for a license or certificate that is denied, suspended, or revoked is to be taken in accordance with the Administrative Procedures Act (Neb. Rev. Stat. Sec. 84-901 et. seq.)

012. FEES AND BOND AMOUNT

012.01. In addition to the fees charged by the Registry, license fees payable to the Board are as follows:

- 012.01A. Collection Agency License Fee---\$200.00
- 012.01B. Collection Agency License Investigation Fee--\$200.00
- 012.01C. Collection Agency Annual Renewal Fee--\$75.00
- 012.01D. Branch Office Certificate Initial--\$50.00
- 012.01E. Branch Office Certificate Renewal--\$35.00
- 012.01F. Solicitor's Certificate (new or renewal)--\$1.00

012.02. Fees are not refundable. However, an applicant that is denied a license may request the License Fee be waived upon re-application.

012.03. A corporate surety bond in at least the following amount is required:

- 012.03A. For those agencies having sixteen or more solicitors --\$15,000
- 012.03B. For those agencies having five to fifteen solicitors--\$10,000
- 012.03C. For those agencies having less than five solicitors--\$5,000
- 012.03D. The Board may require a higher bond amount; however, no person will be required to post a bond in excess of one hundred thousand dollars.