



STATE BANKING DEPARTMENT

RICHARD C. HOUSEWORTH
SUPERINTENDENT OF BANKS

JANET NAPOLITANO
GOVERNOR

REGULATORY BULLETIN CA-05-01

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TO: ALL COLLECTION AGENCIES

Collection Agencies must comply with Arizona statutes and rules A.R.S. § 32-1001 *et. seq.* and A.A.C. R20-4-1501 *et. seq.* and failure to do so may result in a disciplinary administrative action.

Trust Accounts

Collection agencies conducting business in the state of Arizona must adhere to the Arizona statutes and rules relating to trust funds. Officers of record and the designated active manager are responsible to ensure that accounting personnel and other persons handling trust funds are aware of the Department's enforcement of the Arizona statutes and rules. Trust funds are held in trust for clients and shall not be used by the collection agency in the normal course of maintaining its business operations. **Companies that incur trust shortages, make trust transfers in excess of commissions earned, or commingle trust funds with company funds will be subject to disciplinary action that may include a cease and desist order or notice of hearing for the purpose of license suspension or revocation and a civil money penalty.**

Consumer Complaints

The Department receives and investigates consumer complaints relating to collection agencies' conduct, and in particular, the collectors. The Department's objective is to resolve these complaints and satisfy all parties involved. At times, it is difficult for a complainant to show that the alleged misconduct occurred. In some cases, a complaint file may be closed due to an insufficiency of evidence relating to the alleged collector's misconduct. **However, if additional information comes to the Department's attention or a pattern of misconduct is revealed, the Department may re-evaluate the alleged misconduct in a closed complaint and proceed with a disciplinary action against the collection agency or the individual person.**

Regulatory Actions To Remove, Suspend, or Prohibit Individual Employees

Pursuant to A.R.S. § 6-161, the Superintendent has the authority to initiate an administrative action to remove, suspend, or prohibit from participating in the affairs of a licensed collection agency any director, officer, employee, agent, authorized delegate or other person engaging in any of the following:

1. Any act, omission, or practice in any business transaction demonstrating personal dishonesty or unfitness to continue in office or participate in the conduct of the affairs of the financial institution or enterprise.
2. A wilful violation of a Superintendent's order.
3. Refusal to testify or produce records in response to a subpoena issued by the Superintendent.
4. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit.
5. Any activity described in 12 United States Code § 1818(e)(1).
6. Any violation of this title relative to the financial institution or enterprise.

If the Superintendent determines that a person falls within any of the categories set forth above or exhibits a pattern or practice of conduct demonstrating unfitness to continue to participate in the conduct of the affairs of a collection agency, he or she may be subject to a removal, suspension or a prohibition action.

NOTICE

Pursuant to A.R.S. § 6-161(E), a financial institution or enterprise may not employ the person against whom a final removal, suspension, or prohibition order has been issued without the prior written approval of the Superintendent. Final orders will be posted on the Department's website.

Compliance with Federal and Arizona Anti-Money Laundering Statutes

A.R.S. § 6-1203(B)(3) specifically requires collection agencies to comply with the anti-money laundering laws, A.R.S. § 6-1241 *et. seq.* These statutes cross reference and require compliance with the federal anti-money laundering laws known as the Bank Secrecy Act, 31 U.S.C. § 5311-5326. Future examinations will review and test for compliance.

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Superintendent of Banks