

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

– FINANCIAL INSTITUTIONS

ARTICLE 15. COLLECTION AGENCIES

R20-4-1501. Definitions

In this Article, unless the context otherwise requires:

1. “Account” means a contractual arrangement between a client and a collection agency that obligates the collection agency to attempt to collect one or more debts on the client’s behalf.
2. “Active Manager” means the person who is in active management of the conduct of the collection agency’s business, and who meets the qualifications listed in A.R.S. § 32-1023(A).
3. “Client” means a person who has hired a collection agency to collect a debt.
4. “Collection agency” has the meaning in A.R.S. § 32-1001(2).
5. “Contact” means to communicate with, and includes attempted communications.
6. “Credit bureau” or “credit reporting agency” means any person engaged exclusively in the business of gathering, recording, and disseminating information about the credit-worthiness, financial responsibility, paying habits, and character of persons being considered for credit extension.
7. “Creditor” means a person who offers or extends credit creating a debt, or to whom a debt is owed. The term does not include a person that receives an assignment or transfer of a defaulted debt solely for use in collecting the debt for someone else.
8. “Debt” means a debtor’s actual or claimed obligation to pay money, whether or not the obligation has been reduced to judgment.
9. “Debtor” means a person obligated to pay a debt. The term also means a person claimed to be obligated to pay a debt.
10. “Director” has the meaning stated at A.R.S. § 20-102.

R20-4-1502. Applications

- A. An applicant for a license shall complete and file an application, as required by the Department, by delivering the application to the Director, together with the following documents and payment:
 1. The bond required by A.R.S. § 32-1021;
 2. The nonrefundable investigation fee and original license fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126;
 3. A current financial statement in the form required by the Department;
 4. A certified copy of the current articles of incorporation, by-laws, partnership agreement, or other organizational documents under which the applicant proposes to conduct business; and
 5. A statement of personal history for each principal officer, partner, and manager of the applicant, in the form required by the Department.

- B. An out-of-state collection agency applying for a license under A.R.S. § 32-1024 shall complete and file the application required by subsection (A), together with a signed statement declaring that:
 - 1. The requirements for securing the out-of-state license were, when issued, substantially the same or equivalent to the requirements imposed under A.R.S. Title 32, Chapter 9, Article 2. The statement shall also contain a complete description of those requirements.
 - 2. The state issuing the out-of-state license extends reciprocity to Arizona licensees under similar circumstances. The statement shall also contain a complete description of the conditions for reciprocity in the other state.
- C. A licensee applying for license renewal shall complete and file an application, as required by the Department, by delivering the renewal application to the Director before January 1, together with the renewal fee required by A.R.S. § 32-1028 and stated in A.R.S. § 6-126. An application for renewal shall also include a current financial statement in the form required by the Department.
- D. An applicant for a provisional license under A.R.S. § 32-1027 shall complete and file an application as required by the Department, by delivering the application to the Director within 30 days of the event justifying a provisional license. The applicant shall deliver the application together with each of the following:
 - 1. A bond that satisfies the requirements of A.R.S. § 32-1022;
 - 2. A current financial statement as required by the Department;
 - 3. A detailed description of the facts justifying the issuance of a provisional license; and
 - 4. Evidence that the licensee notified the Director as required by A.R.S. § 32-1023, in the event the licensee has terminated its active manager.
- E. An applicant for a provisional license shall, in each instance, be appropriate to the circumstances justifying the provisional license, as follows:
 - 1. A licensee's personal representative, or the personal representative's appointee, shall complete and file an application if the licensee, a natural person, has died;
 - 2. The surviving partners shall complete and file an application if the licensee, a partnership, has dissolved;
 - 3. A licensee shall complete and file an application if an active manager's employment was terminated.
- F. An applicant for a provisional license shall clearly label the top of the first page with the heading "APPLICATION FOR PROVISIONAL LICENSE UNDER A.R.S. § 32-1027."
- G. The Director may require additional information the Director considers necessary in connection with any application under this rule.

R20-4-1503. Reports

A collection agency shall notify the Director in writing of any change in the officers, directors, partners, or active manager of the collection agency not more than 10 days after the change. With the notice, the collection agency shall provide the Director with a Statement of Personal History for each new officer, director, partner, or active manager on a form obtained from the Department.

R20-4-1504. Records

- A.** A licensee may keep its books, accounts, and records as electronic records if the licensee can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.
- B.** All licensees shall keep and maintain books, accounts, and records adequate to provide a clear and readily understandable record of all business conducted by the collection agency, including:
 - 1. Records or books of account listing all clients' accounts. Each account shall reflect its true condition at each calendar month's end, and shall include:
 - a. The client's name and address;
 - b. Each debtor's name worked for collection in that month;
 - c. The amount, description, and date of each debit and each credit to the account; and
 - d. The balance due to, or owing from, the client.
 - 2. A record and history of each debt for collection that clearly shows:
 - a. The debtor's name;
 - b. The debt's principal amount;
 - c. The interest charged or collected;
 - d. The amount, and a description, of any other charges;
 - e. The amount, and date, of each payment received or collected; and
 - f. The current balance due on the debt.
 - 3. An original of each written contract between the licensee and a client, including any contract amendments.
 - 4. A trust general ledger reflecting all deposits to and payments from a trust account. A licensee shall post transactions to its trust general ledger at least every five business days. A licensee shall bring its trust general ledger current within 24 hours when requested by the Director.
 - 5. The licensee's trust account reconciliation, prepared at least once a month.
 - 6. Books, records, and files maintained so that the Director can easily conduct an unannounced spot check, as well as the examinations and investigations required by A.R.S. §§ 6-122 and 6-124.
 - 7. A copy of all pleadings in pending litigation that names the collection agency as a defendant.
 - 8. A record of fictitious names used by the agency's debt collectors as required by Section R20-4-1520.
- C.** A person issuing a receipt for a collection agency shall sign the receipt using that person's true name. Each receipt shall also show the collection agency's name.
- D.** A licensee shall maintain all records required under this Section and shall make them available for examination, investigation, or audit in Arizona within three working days after the Director demands the records.
- E.** A licensee shall retain the records required by this Section for the following periods:
 - 1. A licensee shall retain all records described in subsections (B)(1), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), and (B)(8) for at least seven years following their creation.
 - 2. A licensee shall retain all records described in subsection (B)(2) for at least three years from an account's assignment to the licensee. If a licensee collects any money on an account, the licensee shall retain the records described in subsection (B)(2) for at least three years from the last collection date.

R20-4-1505. Trust Account

- A. A licensee that maintains an office in Arizona shall deposit all funds collected for a client in a trust account at a federally insured depository institution in Arizona. A licensee that does not maintain an office in Arizona shall deposit all funds collected for a client in a trust account at a federally insured depository institution in the state where the licensee maintains its principal office. A licensee shall deposit all client funds before the close of its business on the third business day after the licensee receives the funds. Client funds shall remain on deposit as required by this Section until:
 - 1. Paid over to a client, or
 - 2. Otherwise paid as provided in this Section.
- B. A licensee shall pay funds from the trust account either:
 - 1. By prenumbered printed checks, or
 - 2. By electronic payment.
- C. A licensee shall deposit in its trust account only the funds it has collected for its client. A licensee, its officers, directors, partners, managers, members, or employees shall not commingle, or permit the commingling of, their own funds with client funds. This prohibition includes any funds that a licensee, or any officer, director, partner, manager, member, or employee claims an interest in if that interest arises outside the licensee's contract with a client.
- D. A licensee shall keep unpaid client funds in its trust account. A licensee may maintain a separate trust account for dormant accounts into which the licensee deposits unpaid funds such as those of a client that cannot be located, or any trust account check issued to a client that is returned without being negotiated. As to all those unpaid funds, under A.R.S. § 44-307, a licensee shall file an abandoned property report at the Arizona Department of Revenue as and when required by law.
- E. A licensee shall withdraw from its trust account all fees and commissions due the licensee under its contract with a client and deposit them directly into its own operating account.
- F. A licensee shall not pay funds from its trust account except as:
 - 1. Provided in this Section,
 - 2. Expressly authorized in its contract with a client, or
 - 3. Authorized in writing by the Director.

R20-4-1506. Articles of Incorporation; Bylaws; Organizing Documents

- A. A collection agency organized as a corporation shall file with the Director a copy of each amendment to its articles of incorporation within 30 days after the amendment is adopted. Before filing with the Director, an officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy.
- B. A collection agency organized as a corporation shall file with the Director a copy of each amendment to its bylaws within 10 days after the amendment is adopted. An officer of the collection agency shall certify the copy filed in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.
- C. A collection agency not organized as a corporation shall file with the Director a copy of each amendment to its organizing documents within 10 days after the amendment is adopted. A partner, active manager, or agent of the collection agency shall certify the copy filed in

compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

R20-4-1507. Representations of Collection Agency’s Identity

In all communications with debtors, either orally or in writing, all the following rules apply:

1. A collection agency shall represent itself as a collection agency,
2. A collection agency shall not directly or indirectly claim to be a credit reporting agency or credit bureau if it is not,
3. A collection agency shall not directly or indirectly claim to be a law enforcement agency, and
4. A collection agency shall not directly or indirectly claim to be a law firm.

R20-4-1508. Representations of the Law

A collection agency shall not:

1. Misrepresent the state of the law to a debtor;
2. Send a debtor written material that simulates legal process; or
3. Represent or imply that a debtor is, or may be, subject to criminal prosecution or arrest because of a failure to pay the debt.

R20-4-1509. Representations as to Fees, Costs, and Legal Proceedings; Disinterested Counsel Required

- A. A collection agency shall not threaten to collect, or attempt to collect, an attorney’s fee, collection cost, or other fee that the debtor is not obliged to pay under the debtor’s contract with the collection agency’s creditor client.
- B. A collection agency shall not inform a debtor that legal proceedings have been started unless, in fact, a lawsuit has been filed against the debtor.
- C. A collection agency shall not threaten to start legal proceedings against a debtor unless the collection agency actually intends, at the time of the threat, to sue.
- D. A collection agency shall not threaten to turn an account over to a lawyer unless the collection agency actually intends to do so at the time of the threat.
- E. A collection agency shall not file a lawsuit against a debtor unless the lawsuit is filed by an attorney who has no personal or financial interest in the collection agency filing the lawsuit against the debtor.

R20-4-1510. Representations as to Rights Waived or Remedies Available

- A. A collection agency shall not inform a debtor that:
 1. The debtor waives any legal right or legal defense by a failure to contact the collection agency, and
 2. The collection agency has the power or right to bypass the legal process.
- B. A collection agency shall not misrepresent the remedies available to the collection agency.

R20-4-1511. Prohibition of Harassment

- A. A collection agency shall not use unauthorized or oppressive tactics designed to harass any person to pay a debt.
- B. A collection agency shall not use written or oral communications that ridicule, disgrace, or humiliate any person, or tend to ridicule, disgrace, or humiliate any person.

- C. A collection agency shall not state, imply, or tend to imply, in written or oral communications, that any person is guilty of fraud or any other crime.
- D. A collection agency shall not permit its agents, employees, representatives, debt collectors, or officers to use obscene or abusive language in efforts to collect a debt.
- E. A collection agency or its agents, employees, representatives or officers are subject to penalties listed in A.R.S. § 32-1056(B) for any violation of this Article, as well as other liabilities imposed under any other provision of law.

R20-4-1512. Contacts with Debtors and Others

- A. A collection agency shall contact a debtor by telephone only during reasonable hours. A collection agency shall make a reasonable attempt to contact a debtor at the debtor's residence. A collection agency may contact a debtor at the debtor's place of employment if a reasonable attempt to contact the debtor at the debtor's residence has failed.
- B. A collection agency shall not threaten to or contact a third party, including a debtor's friend, relative, neighbor, or employer and:
 1. Inform the third party of the debt;
 2. Ask the third party to pressure the debtor into paying the debt; or
 3. Ask the third party to pay the debt, unless the third party is legally obligated to pay the debt.
- C. Despite the other provisions of this Section, a collection agency may make lawful service on third parties, including employers, of a writ of garnishment or other writ in aid of execution after judgment has been entered against a debtor.

R20-4-1513. Cessation of Communication with the Debtor

- A. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor tells the collection agency that the debtor is represented by a lawyer and wants the collection agency to communicate with the debtor through the debtor's lawyer. The collection agency may later contact the debtor if the collection agency contacts the lawyer named by the debtor and learns that the lawyer does not represent the debtor.
- B. A collection agency shall stop contacting a debtor, directly or indirectly, if the debtor gives the collection agency written notice that the debtor:
 1. Refuses to pay the debt, or
 2. Wants the collection agency to stop all further communication with the debtor.
- C. Despite the provisions of subsection (B), a collection agency may contact a debtor to inform the debtor that:
 1. The collection agency has stopped trying to collect the debt, or
 2. The collection agency or the creditor may invoke specific remedies that are customarily used by the collection agency or the creditor.
- D. The debtor's written notice under subsection (B) is effective upon receipt by the collection agency if delivered by mail.

R20-4-1514. Disclosure of Information to Debtor

- A. Within five days after the initial communication with the debtor, a collection agency shall obtain and be able to inform the debtor of:
 1. The name of the creditor;
 2. The time and place of the creation of the debt;

3. The merchandise, services, or other value provided in exchange for the debt; and
 4. The date when the account was turned over to the collection agency by the creditor.
- B.** A collection agency shall give the debtor access to any of the collection agency's records that contain the information listed in subsection (A).
- C.** At the debtor's request, the collection agency shall give the debtor, free of charge, a copy of any document from its records that contains the information listed in subsection (A).

R20-4-1515. Aiding and Abetting

A collection agency shall not help or encourage, directly or indirectly, any person to evade or violate any provision of:

1. This Article, or
2. A.R.S. Title 32, Chapter 9.

R20-4-1516. Advertising

A collection agency shall not use any form of communication to state or imply that the collection agency is:

1. Approved, bonded by, or affiliated with the state of Arizona;
2. A state agency;
3. The director of any state agency; or
4. Authorized to practice law.

R20-4-1518. Agreements with Clients

A collection agency's records shall document each client's account in writing. The records for an account shall include either a written agreement between the client creditor and the collection agency, or a written direction from the creditor to the collection agency concerning a specific debt placed for collection. The collection agency shall keep records that are specific, easily understood, and unambiguous. A provision of a written agreement or written direction that suggests the collection agency has authority to represent the client in court or to practice law in any other way is void and prohibited by this Section. The records for an account shall separately state:

1. The names of the parties to the agreement or written direction,
2. The terms or rate of compensation paid to the collection agency,
3. The length of time the agreement or written direction is intended to be in effect, and
4. Any conditions regarding collection of a particular debt.

R20-4-1519. Licensee Names and Control

- A.** The Department shall not issue a license with a name that is:
1. Similar to, or that may be confused with, any federal, state, county, or municipal government function or agency;
 2. Descriptive of any business activity that the applicant does not actually conduct;
 3. The same as, or similar to, the name of any existing collection agency, or
 4. Otherwise deceptive or misleading.
- B.** The Department may permit the use of a name otherwise prohibited under subsection (A)(3) based on its analysis of whether the name includes geographic or other information that distinguishes it from the existing collection agency.

- C. A collection agency shall not use a collection agency license to do business under more than one name. Each collection agency shall apply for and obtain a separate license for each business name it intends to use in Arizona.

R20-4-1520. Representations of Collection Agency Employees' Identity or Position

- A. A collection agency shall not allow its debt collector, agent, representative, employee, or officer to:
 - 1. Misrepresent the person's true position with the collection agency;
 - 2. Claim to be, or imply that the person is, an attorney unless the person is licensed to practice law;
 - 3. Claim to be, or imply that the person is, a public official, peace officer, or any other type of public employee; or
 - 4. Claim to be, or imply that the person is, any other third party.
- B. In any communication with a debtor, a person working for a collection agency shall indicate that the person is a debt collector.
- C. A collection agency shall keep a record of all fictitious names used by its debt collectors during their employment. The collection agency shall record the information required by this subsection before permitting the use of a fictitious name. The collection agency shall file a copy of the record of fictitious names with the Department on July 1 and December 31 of each year. After filing the initial report, a collection agency shall identify all changes to the record on July 1 and December 31 of each year. The collection agency's record of fictitious names shall include:
 - 1. The true name of each debt collector that uses a fictitious name;
 - 2. Each fictitious name used by the debt collector, together with the dates when the name is used; and
 - 3. The residential street address and residential mailing address of each debt collector that uses a fictitious name.

R20-4-1521. Duty of Investigation

A collection agency shall give copies of its evidence of the debt to the debtor or the debtor's attorney upon request. After providing the evidence, but before continuing its collection efforts against the debtor, the collection agency shall investigate any claim by the debtor or the debtor's attorney that:

- 1. The debtor has been misidentified,
- 2. The debt has been paid,
- 3. The debt has been discharged in bankruptcy, or
- 4. Based on any other reasonable claim, the debt is not owed.