

Chapter 308-29 WAC

COLLECTION AGENCIES AND REPOSSESSION SERVICES

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[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-010, filed 5/22/01, effective 6/22/01; Order PL-123, § 308-29-010, filed 5/17/72.]

WAC 308-29-020 Financial statement. Each applicant must submit a current (within prior three months) financial statement of assets and liabilities. Such statement shall be submitted in the manner and form prescribed by the director. Whenever a licensee applies for annual license renewal, such licensee must sign the renewal form that contains a certification:

- (1) That the collection agency's true net worth complies with the requirements of RCW 19.16.245; and
- (2) That the trust account(s) have sufficient funds to pay all obligations to clients.

[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-020, filed 5/22/01, effective 6/22/01; Order PL-123, § 308-29-020, filed 5/17/72.]

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

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| 308-29-040 | Collection agency—Fees. [Statutory Authority: RCW 43.24.085. WSR 80-14-022 (Order 356), § 308-29-040, filed 9/25/80; Order PL 221, § 308-29-040, filed 11/5/75.] Repealed by WSR 83-17-031 (Order PL 442), filed 8/10/83. Statutory Authority: 1983 c 168 § 12. Later promulgation, see WAC 308-29-045. |
| 308-29-100 | Preliminary record in brief adjudicative proceedings. [Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-100, filed 5/22/01, effective 6/22/01.] Repealed by WSR 07-17-145, filed 8/21/07, effective 9/21/07. Statutory Authority: RCW 19.16.410. |

WAC 308-29-010 Definitions. (1) Words and terms used in these rules have the same meaning as each has under chapter 19.16 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(2) "Branch office" is any location physically separated from the principal place of business of a licensee where the licensee conducts any activity meeting the criteria of a collection agency or out-of-state collection agency as defined in RCW 19.16.100.

(3) "Repossession services" conducted by any person shall not be deemed a collection agency as defined in RCW 19.16.100, unless such person is repossessing or is attempting to repossess property for a third party and is authorized to accept cash or any other thing of value from the debtor in lieu of actual repossession.

(4) "Managing employee" is an individual who has the general power to exercise judgment and discretion in acting on behalf of the licensee on an overall or partial basis and who does not act in an inferior capacity under close supervision or direction of a superior authority (as distinguished from a nonmanaging employee who is told what to do and has no discretion about what he or she can and cannot do and who is responsible to an immediate superior).

WAC 308-29-025 What records must a licensee maintain at the licensed location? Required records:

The collection agency must maintain the following records at the licensed location:

(1) Bank trust records.

(a) Duplicate receipt book or cash receipts journal recording all receipts showing date received and the customer who paid;

(b) Sequentially numbered checks with check register or cash disbursement journal or check stubs showing the purpose of the disbursement and the client account it is debited to;

(c) Bank deposit slips verifying the date deposited and reconciled with receipt book or cash receipts journal;

(d) Client's accounting ledger or client remittance report summarizing all moneys received and all moneys disbursed for each client collection account; and

(e) Reconciled bank statements and canceled checks for all trust bank accounts.

(2) Other records.

(a) Copies of all financial statements of licensee showing solvency;

(b) Annotations of significant events or conversations with debtors;

(c) Transactions folders containing all agreements, contracts, documents, statements and correspondence for each debtor and client (may be maintained electronically or on other retrievable medium); and

(d) Collection agreements authorizing the licensee to collect debts or a schedule listing all fees or charges to be charged to the debtor or client.

Accuracy, accessibility and retention of records:

All required records shall be accurately posted, kept up-to-date and kept at the address where the collection agent is licensed to do business. Such records shall be retained and available for inspection by the director or the director's autho-

rized representative during normal business hours. The collection agent shall provide copies of required records upon demand by the director or the director's authorized representative.

(3) Licensee's responsibilities:

(a) The licensee shall be responsible for the custody, safety and the accuracy of entries in all required records. The licensee retains this responsibility even though another person or persons assume the duties of preparation, custody or recording.

(b) The licensee shall obtain copies of the Collection Agency Act (chapter 19.16 RCW) and the rules implementing the act (chapter 308-29 WAC) and be knowledgeable of these laws and rules in their most recent version.

(c) The licensee must ensure accessibility of the licensed location and records to the director or the director's representative.

(4) Administration of trust funds and client property:

(a) A licensee who receives funds or moneys from any debtor, client or customer shall hold the funds or moneys in trust for the purposes of the agreement and shall not utilize such funds or moneys for the benefit of the licensee or any person not entitled to such benefit.

(b) All funds or moneys received shall be deposited into a federally insured banking institution.

(c) The trust bank account will be in the licensee's name and identified as a trust account.

(d) Preauthorization of regular disbursements or deductions on an ongoing basis by financial institutions is not permitted for multiclient accounts.

(e) When a contract between the licensee and client expires, terminates, or is no longer in existence, the licensee shall give a closing statement to the client summarizing all receipts and payments since the last statement and shall return all instruments and client property to the client within thirty days after written demand from the client, or as specified in the client contract.

[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-025, filed 5/22/01, effective 6/22/01.]

WAC 308-29-030 Do licensees have to notify the director of changes in ownership, officers, directors, or managing employees? (1) Each licensee shall notify the director in writing:

(a) Within ten business days of any change in its ownership;

(b) Within ten business days of any change in officers, directors, or managing employees of each office location.

The notification shall consist of reporting the individual's name, position, address and effective date of change.

(2) If requested by the department, each licensee shall notify the department in writing of any additional information regarding the change or changes in subsection (1) of this section within ten days after the mailing of the request.

[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-030, filed 5/22/01, effective 6/22/01; WSR 87-11-064 (Order PM 653), § 308-29-030, filed 5/20/87; Order PL-141, § 308-29-030, filed 12/18/72.]

WAC 308-29-045 Collection agency fees. The following fees will be charged by the business and professions division of the department of licensing:

| Title of Fee | Fee |
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| Collection agency—Main office: | |
| Original application | \$850.00 |
| Renewal | \$475.00 |
| Reregistration fee after 30 days | \$1,325.00 |
| Branch office (with WA main office): | |
| Original application | \$550.00 |
| Renewal | \$300.00 |
| Reregistration fee after 30 days | \$850.00 |
| Out-of-state collection agency—Main office: | |
| Original application | \$425.00 |
| Renewal | \$237.50 |
| Reregistration fee after 30 days | \$662.50 |
| Branch office—With out-of-state main office: | |
| Original application | \$275.00 |
| Renewal | \$150.00 |
| Reregistration fee after 30 days | \$425.00 |

[Statutory Authority: RCW 19.16.140, 43.24.086, and 2011 1st sp.s. c 50. WSR 11-23-159, § 308-29-045, filed 11/22/11, effective 12/23/11. Statutory Authority: RCW 19.16.140, 43.24.086. WSR 04-18-043, § 308-29-045, filed 8/26/04, effective 10/1/04. Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-045, filed 5/22/01, effective 6/22/01. Statutory Authority: RCW 43.24.086. WSR 90-06-052, § 308-29-045, filed 3/2/90, effective 4/2/90; WSR 87-10-028 (Order PM 650), § 308-29-045, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-22-060 (Order PL 446), § 308-29-045, filed 11/2/83; WSR 83-17-031 (Order PL 442), § 308-29-045, filed 8/10/83. Formerly WAC 308-29-040.]

WAC 308-29-050 Are licensees required to notify the director of lawsuits, judgments, etc., involving the licensee or its employees? (1) Within thirty days after the entry of any judgment against the licensee or any owner, officer, director or managing employee of a nonindividual licensee, the licensee shall notify the director in writing of the judgment, if the judgment arises out of any of the practices prohibited in RCW 19.16.250 or of any of the grounds set forth in RCW 19.16.120.

(2) Within thirty days after the filing, service or knowledge of a tax lien or warrant filed against the licensee or any owner, officer, director or managing employee of a nonindividual licensee, the licensee shall notify the director in writing of the lien or warrant.

(3) Within thirty days after the filing, service or knowledge of any suit, complaint, counterclaim or cross claim served or filed in any court in which the licensee or any owner, officer, director or managing employee of a nonindividual licensee is named a defendant, the licensee shall notify the director in writing of such matter if it:

(a) Involves alleged violations of RCW 19.16.210; or

(b) Is or purports to be brought on behalf of the state of Washington or three or more persons.

(4) Within thirty days after the licensee or any owner, officer, director or managing employee of a nonindividual

licensee files a petition for bankruptcy, the licensee shall notify the director in writing of the filing of the petition.

(5) The written notification shall be sent by certified or registered mail and shall identify:

- The names of all parties, plaintiff and defendant;
- The court in which the action is commenced; and
- The cause number assigned to the action.

[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-050, filed 5/22/01, effective 6/22/01; WSR 79-06-084 (Order PL-306), § 308-29-050, filed 6/1/79.]

WAC 308-29-060 What are the licensees' obligations when transferring an interest in a collection agency? (1)

In order to transfer the licensee's interest in a collection agency or out-of-state collection agency, unless the transfer is due to the death of an individual licensee, the licensee shall notify all of its clients with open accounts, or cause such clients to be notified, of the transfer of the licensee's interest.

(2) The instrument by which the interest is transferred shall be in writing, and shall indicate:

(a) That the license or branch office certificate granted under chapter 19.16 RCW is not assignable or transferable, that the transfer of the licensee's interest in the business does not include such license or certificate, that the transferee of the interest must apply for a license and/or certificate in accordance with the law, and that the transferee of the interest may not act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in chapter 19.16 RCW, without first having applied for and obtained a license under that chapter;

(b) Which party to the transaction bears responsibility for payment to clients of amounts due them between the date the instrument is executed and the effective date of the transfer;

(c) Which party to the transaction bears responsibility for maintaining and preserving the records of the collection agency or out-of-state collection agency as prescribed by RCW 19.16.230 and these rules;

(d) Whether the transfer of interest includes the right to use of the business name or trade name of the collection agency or out-of-state collection agency; and

(e) Which party to the transaction bears responsibility for providing written notice of the transfer to the clients of the collection agency who have open accounts with the collection agency or out-of-state collection agency.

(3) The licensee must provide the director a copy of the instrument transferring the licensee's interest signed by all parties to the transaction and shall indicate the effective date of the transfer.

[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-060, filed 5/22/01, effective 6/22/01; WSR 87-11-064 (Order PM 653), § 308-29-060, filed 5/20/87; WSR 86-14-051 (Order PM 602), § 308-29-060, filed 6/27/86; WSR 79-06-084 (Order PL-306), § 308-29-060, filed 6/1/79.]

WAC 308-29-070 Disclosure of rate of interest.

Whenever a collection agency is required pursuant to RCW 19.16.250 (8)(c) to disclose to the debtor that interest charges are being added to the original obligation, the collection agency must also disclose to the debtor the rate of interest. The rate of interest cannot exceed the legal maximum rate established in chapter 19.52 RCW.

(10/5/18)

[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-070, filed 5/22/01, effective 6/22/01; WSR 87-11-064 (Order PM 653), § 308-29-070, filed 5/20/87; WSR 86-14-051 (Order PM 602), § 308-29-070, filed 6/27/86.]

WAC 308-29-080 Does a collection agency have to notify the credit reporting agency when the debt is satisfied?

If a collection agency informs a credit-reporting agency of the existence of a claim, the collection agency shall promptly notify the credit-reporting agency that the claim has been satisfied. In the absence of other applicable law, "promptly" shall mean within forty-five days after satisfaction of the claim.

[Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-080, filed 5/22/01, effective 6/22/01; WSR 87-11-064 (Order PM 653), § 308-29-080, filed 5/20/87; WSR 86-14-051 (Order PM 602), § 308-29-080, filed 6/27/86.]

WAC 308-29-090 Brief adjudicative proceedings—

When they can be used. (1) The board adopts RCW 34.05.-482 through 34.05.494 for the administration of brief adjudicative proceedings conducted at the discretion of the board. Brief adjudicative proceedings can be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act. Brief adjudicative proceedings can also be used whenever the statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of any statute or rule that specifically governs disciplinary actions within a profession for which the applicant seeks a license or from which the licensee holds a license.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant or licensee has satisfied financial security requirements by providing adequate proof of surety bonds or other proof of financial security, as required by law;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant or licensee failed to cooperate in an investigation by the board;

(f) Whether an applicant or licensee was convicted of a crime that should disqualify the applicant or licensee from holding the specific license sought or held;

(g) Whether an applicant or licensee has violated the terms of a final order issued by the board;

(h) Whether a licensee has committed recordkeeping violations;

(i) Whether a licensee has committed trust account violations;

(j) Whether an applicant or licensee has engaged in false, deceptive, or misleading advertising; or

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(k) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (1) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

[Statutory Authority: RCW 46.01.110 and 2018 c 199. WSR 18-21-028, § 308-29-090, filed 10/5/18, effective 11/5/18. Statutory Authority: RCW 19.16.410. WSR 07-17-145, § 308-29-090, filed 8/21/07, effective 9/21/07; WSR 01-11-132, § 308-29-090, filed 5/22/01, effective 6/22/01.]

WAC 308-29-110 Conduct of brief adjudicative proceedings. Brief adjudicative proceedings shall be conducted by a presiding officer designated by the board. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

[Statutory Authority: RCW 19.16.410. WSR 07-17-145, § 308-29-110, filed 8/21/07, effective 9/21/07; WSR 01-11-132, § 308-29-110, filed 5/22/01, effective 6/22/01.]

WAC 308-29-120 Appeal process for brief adjudicative proceedings. If you do not receive satisfaction from the brief adjudicative proceeding, you may appeal to the board for an administrative review. The board must receive your written appeal within twenty-one days after the brief adjudicative proceeding order is posted in the United States mail. The board considers your appeal and either upholds or overrules the brief adjudicative proceeding decision. The board's decision, also called an order, is mailed to you. This section does not apply to brief adjudicative proceedings conducted by the board through WAC 308-29-090(2).

[Statutory Authority: RCW 19.16.410. WSR 07-17-145, § 308-29-120, filed 8/21/07, effective 9/21/07; WSR 01-11-132, § 308-29-120, filed 5/22/01, effective 6/22/01.]

WAC 308-29-130 Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings. (1) At least five days before the scheduled brief adjudicative proceeding, any party to the proceeding, including the board, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that a matter be converted to a formal adjudicative hearing. Upon receiving a timely written objection, the presiding officer shall determine whether the matter should be converted. Regardless of whether any party files a timely objection, the presiding officer may convert any brief adjudicative proceeding to a formal adjudicative hearing whenever it appears that a brief adjudicative proceeding is insufficient to determine the issues pending before the board.

(2) In determining whether to convert a proceeding, the presiding officer may consider the following factors:

(a) Whether witness testimony will aid the presiding officer in resolving contested issues of fact;

(b) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;

(c) Whether a brief adjudicative proceeding will establish an adequate record for further board or judicial review;

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(d) Whether the legal issues involved in the proceeding present questions of legal significance or are being raised for the first time before the board;

(e) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and

(f) Any other factors that the presiding officer deems relevant in reaching a determination.

[Statutory Authority: RCW 19.16.410. WSR 07-17-145, § 308-29-130, filed 8/21/07, effective 9/21/07.]