

## ***Frequently Asked Questions***

### ***Page 1***

#### ***Q. What is a collection agency?***

- A. Pursuant to North Carolina General Statute § 58-70-15(b), collection agency includes the following:
- (1) Any person that procures a listing of delinquent debtors from any creditor and that sells the listing or otherwise receives any fee or benefit from collections made on the listing;
  - (2) Any person that attempts to or does transfer or sell to any person not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or demand;
  - (3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business;
  - (4) A 'debt buyer.' As used in this subdivision, the term 'debt buyer' means a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts, or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt.

#### ***Q. When is a debt considered “delinquent”?***

- A. The timeframe in which a debt is considered “delinquent” varies based on the terms and conditions of the payment agreement between the debtor and the original creditor. The payment agreement determines when a payment is considered “delinquent”.

#### ***Q. Do I need a collection agency permit if I collect delinquent debts for creditors located in North Carolina? What about creditors located outside of North Carolina?***

- A. A collection agency permit is required for entities that perform collection activity on behalf of North Carolina creditors. Additionally, a permit is required for entities performing collection activity on behalf of a nonresident creditor who has debtors located in North Carolina.

## ***Frequently Asked Questions***

### ***Page 2***

***Q. Does a mortgage banking company involved in collection activity associated with defaulted loans need to be licensed as a collection agency?***

A. North Carolina General Statute § 53-243.01(13) defines a mortgage banking company as a mortgage lender. A mortgage lender is one who is in the business of making mortgage loans for compensation or gain. All mortgage banking companies doing business in North Carolina are required to be licensed with the North Carolina Commissioner of Banks.

A mortgage bank does not require a collection agency permit to collect on defaulted loans that it originated, nor to collect on loans that it purchased which may be or subsequently go into default.

***Q. Is a bank or savings and loan institution, involved in collection activity, required to be licensed as a collection agency?***

A. No. North Carolina General Statute § 58-70-15(c) list the entities excluded from licensure.

***Q. Is a law firm that collects debts in its own name on behalf of clients required to be licensed as a collection agency?***

A. No. North Carolina General Statute § 58-70-15 (c) (8) excludes from licensure attorneys-at-law handling claims and collections in their own name and not operating a collection agency under the management of a layman.

***Q. Does the Department issue collection agency permits for businesses located outside of the United States?***

A. If a collection agency office is a part of a corporation incorporated or organized under the laws of the United States or of any other jurisdiction within the United States, then the U.S. Corporation may apply for licensure for its offices which are not located within the United States. Alien collection agencies that are incorporated or organized under the laws of any jurisdiction outside of the United States are not eligible for licensure.

***Q. How do I apply for a collection agency permit?***

A. Instructions to complete the application are listed on the Department's website ([www.ncdoi.com](http://www.ncdoi.com)).

## ***Frequently Asked Questions***

### ***Page 3***

***Q. What is the cost of the collection agency permit? Is the permit subject to a limited period of time?***

A. There is a \$1000 nonrefundable fee due upon submission of the collection agency application. Permits are issued when the application is approved. All permits expire on June 30<sup>th</sup> regardless of the date of issue.

***Q. Is there a bond requirement associated with obtaining a collection agency permit?***

A. Yes. North Carolina General Statute § 58-70-20(a) requires (as a condition precedent to the issuance of the permit) a bond in favor of the State of North Carolina that is executed by a surety company licensed to transact surety business in North Carolina. The bond is required to be kept in force during the permit period. The bond is in the amount of \$10,000 for the initial permit.

North Carolina General Statute § 58-70-20(c) requires an additional \$10,000 bond for nonresident applicants. This bond is also required to be written in favor of the State of North Carolina and executed by a surety company licensed to transact surety business in North Carolina. As such, the total bond requirement for a nonresident applicant is \$20,000.

***Q. Does the bond requirement ever change?***

A. Yes. The bond requirement may change upon the renewal of the permit. The new amount may range from \$10,000 - \$75,000. This amount is based on the total collections paid directly to the collection agency less commissions earned by the collection agency on those collections for the calendar year ending immediately prior to the date of application, multiplied by one-sixth.

***Q. Is a collection agency required to maintain records associated with collection activity?***

A. Yes. North Carolina General Statute § 58-70-25 requires a collection agency to keep full and correct records of all business done in the State.

***Q. Is a collection agency required to have its name and North Carolina permit number on letters sent to debtors?***

A. Yes. North Carolina General Statute § 58-70-50 requires a collection agency to place its permit number, true name and address on all correspondence sent to debtors.

## ***Frequently Asked Questions***

### ***Page 4***

***Q. If a collection agency has a properly registered trade name, can it use the trade name in letters sent to debtors?***

A. Yes; however, both the trade name and the legal name should appear on the letters.

***Q. What is the trust account requirement for a resident collection agency? For a nonresident collection agency?***

A. North Carolina General Statute § 58-70-65(a) requires each permit holder to deposit (no later than two banking days after receipt) in a separate trust account in any bank located in North Carolina or in any other bank approved by the Commissioner sufficient funds to pay all moneys due or owed to all collection creditors or forwarders.

Nonresident collection agencies are required to have a separate trust account, designated for its North Carolina creditors, funds to pay all monies due or owing all collection creditors or forwarders located within the State.

***Q. Are there any exemptions for collection agencies from the trust account requirement?***

A. North Carolina General Statute § 58-70-65(a) requires each permit holder to deposit (no later than two banking days after receipt) in a separate trust account in any bank located in North Carolina or in any other bank approved by the Commissioner sufficient funds to pay all moneys due or owed to all collection creditors or forwarders.

A collection agency may be exempt from the trust account requirement as long as the collection method used does not include the receipts of payments from debtors because: 1) The payments are made directly to creditors or 2) The collection agency only negotiates debt payments. An official attestation is required before the Department will grant an exemption from the trust account.

***Q. Can a corporation with multiple collection agency locations establish a trust account and direct debtor payments to a location other than the permit holder?***

A. Yes. North Carolina General Statute § 58-70-65 could allow a licensed location of the corporation to establish such a trust account provided that (1) the other location is also a licensed permit holder and (2) that a separate North Carolina trust account is establish for the permit holder.

## ***Frequently Asked Questions***

### ***Page 5***

***Q. Can a nationwide collection agency establish a “master trust” account to provide for all incoming deposits from the various states?***

A. Yes. North Carolina General Statute § 58-70-65 could allow the establishment of a master account ***as long as*** the funds are then ***promptly*** transferred to a separate North Carolina specific account.

***Q. Is there a receipt requirement for collection agencies when a cash payment is received from a debtor?***

A. Yes, pursuant to North Carolina General Statute § 58-70-70(a), whenever a payment is received in cash from a debtor, forwarded, or other person, an original receipt or an exact copy thereof shall be furnished the individual from whom payment is received. Evidence of all receipts issued shall be kept in the permit holder's office for three years. All receipts issued must:

- (1) Be prenumbered by the printer and used and filed in consecutive numerical order;
- (2) Show the name, street address and permit number of the permit holder;
- (3) Show the name of the creditor or creditors for whom collected;
- (4) Show the amount and date paid; and
- (5) Show the last name of the person accepting payment.

***Q. Are there any additional receipt requirements that apply to debt buyers?***

A. Yes, pursuant to North Carolina General Statute § 58-70-70(b) Whenever payment in any form is received by or on behalf of a debt buyer, in addition to meeting the requirements set forth in subsection (a) of this section, the receipt shall also:

- (1) Show the name of the creditor or creditors for whom collected, the account number assigned by the creditor or creditors for whom collected, and if the current creditor is not the original creditor, the account number assigned by the original creditor.
- (2) State clearly whether the payment is accepted as either payment in full or as a full and final compromise of the debt, and if not, the receipt shall state clearly the balance due after payment is credited.

***Q. How do I renew my collection agency permit?***

A. North Carolina General Statute § 58-70-10 states that any person, firm, corporation or association desiring to renew a permit must submit an application to the North Carolina Department of Insurance not less than 30 days prior to the expiration date of the current permit. The Department

## ***Frequently Asked Questions***

### ***Page 6***

will send a renewal invoice by the end of March each year. The cost to renew the collection agency permit is a nonrefundable fee of \$1000 due by May 31 of each year.

In addition to paying the renewal fee, the applicant must submit a renewal application which must contain all the information required for a new license.

1. A copy of a "Continuation Certificate" or paid receipt for renewal premiums for the collection agency bond for the year in which the renewal is applied. The bond calculation form must accompany this filing as well as any surety bond rider(s) for increases if applicable;
2. A balance sheet for the last fiscal year ending prior to the application, certified true and correct by a corporate officer setting forth the current assets, current liabilities, fixed assets and a positive net-worth; and
3. A written statement of changes and updates to the corporate office and officers. (Complete a DOI-5 when there are changes.)
4. Failure to renew a collection agency license before June 30th may result in administrative action taken against the licensee. The penalty for non-renewal could include a monetary fine and Voluntary Settlement Agreement, reapplying for a collection agency license, the refusal to renew the license or a combination thereof."

***Q. How do I change the collection agency demographic data showing on the Department's website (name, address, contact information).***

- A. Submit all changes in writing for review and update to:  
NCDOI-Agent Services Division  
1204 Mail Service Center  
Raleigh, NC 27699-1204

***Q. I am a licensed collection agency. Is it permissible for my clients, who are creditors, to sign a release to my agency allowing us to take their debtors to small claims court?***

- A. No. North Carolina General Statute § 58-70-120 provides that "Neither a collection agency nor a representative thereof who is not a duly licensed attorney shall engage in the practice of law." A collection agency is prohibited from appearing in court on behalf of a creditor except as required by court order or subpoena, and except to submit and explain claims in bankruptcy court.

## ***Frequently Asked Questions***

### ***Page 7***

***Q. What is the violation for operating a collection agency without a permit?***

A. North Carolina General Statute § 58-70-1 states that a person, firm, corporation or association conducting or operating a collection agency without the permit shall be guilty of a Class I felony.

***Q. Are there any prohibitions regarding unfair trade practices by collection agencies?***

A. North Carolina General Statute § 58-70-115 states that no collection agency shall collect or attempt to collect any debt by use of any unfair practices. Such means practices include, but are not limited to, the following:

- (1) Seeking or obtaining any written statement or acknowledgment in any Form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver;
- (2) Collecting or attempting to collect from the consumer all or any part of The collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge;
- (3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.
- (4) When the collection agency is a debt buyer or is acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor or otherwise attempting to collect on a debt when the collection agency knows, or reasonably should know, that such collection is barred by the applicable statute of limitations.
- (5) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor, or otherwise attempting to collect on the debt without (i) valid documentation that the debt buyer is the owner of the specific debt instrument or account at issue and (ii) reasonable verification of the amount of the debt allegedly owed by the debtor. For purposes of this subdivision, reasonable verification shall include documentation of the name of the original creditor, the name and address of the debtor as appearing on the original creditor's records, the original consumer account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of the

## ***Frequently Asked Questions***

### ***Page 8***

amount claimed to be owed, including all fees and charges.

- (6) When the collection agency is a debt buyer or acting on behalf of a debt buyer, bringing suit or initiating an arbitration proceeding against the debtor to collect on a debt without first giving the debtor written notice of the intent to file a legal action at least 30 days in advance of filing. The written notice shall include the name, address, and telephone number of the debt buyer, the name of the original creditor and the debtor's original account number, a copy of the contract or other document evidencing the consumer debt, and an itemized accounting of all amounts claimed to be owed.
- (7) Failing to comply with Part 5 of this Article. Part 5 outlines the special requirements in actions filed by collection agency plaintiff.

#### ***Q. Are collection agencies required to report criminal convictions?***

- A. Pursuant to North Carolina General Statute 58-70-40(b) if an individual proprietor, officer, or partner of the collection agency has been convicted in any court of competent jurisdiction for any crime involving dishonesty or breach of trust, the collection agency shall notify the Commissioner in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere. The conviction by a court of competent jurisdiction of any permittee for a violation of this Article shall automatically have the effect of suspending the permit of that permittee until such time that the permit is reinstated by the Commissioner. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, and a plea of nolo contendere."

#### ***Q. Are collection agencies required to report administrative actions taken against the collection agency?***

- A. Pursuant to North Carolina General Statute 58-70-40 (e) a collection agency shall report to the Commissioner any administrative action taken against the collection agency by another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other information or documents filed in the proceeding necessary to describe the action.