

DEBT COLLECTION POLICY

SCOPE

This policy applies to all assistant attorneys general, all special assistant attorneys general, and all appointees, employees, and other representatives of the Office of Attorney General, Bank of North Dakota, Child Support Enforcement Division of the Department of Human Services, Health Department, Insurance Department, Job Service North Dakota, Labor Department, Office of State Tax Commissioner, Workers Compensation Bureau, or any other State entity that adopts this policy, who collect or attempt to collect, directly or indirectly, a debt owed or due to the State of North Dakota or a State entity (hereinafter "debt collectors").

This policy is in addition to the laws binding upon debt collection, including the Rules of Professional Conduct, and any state or federal statutes, rules, regulations, and other legal requirements regarding debt collection. Debt collectors who are not exempt from the laws binding upon debt collection must comply with the laws and this policy. For example, debt collectors who are not exempt from the Fair Debt Collection Practices Act, 15 USC §§ 1692-1692(o), must comply with that Act and this policy. If there is a question about how to comply with the laws and this policy, debt collectors should contact the Solicitor General with the Office of Attorney General prior to engaging in the debt collection activity.

PURPOSE

The purpose of this policy is to ensure effective debt collection practices that are fair, appropriate, and consistent. Debt collectors must understand that, when in contact with the public, they project an image of the entire State and of the State entity. They have an obligation to serve and treat the public in a fair, impartial, and respectful manner.

Debt collectors should be aware of their unique obligations when collecting debts owed to the State or a State entity and should comply with this debt collection policy. If there is a question about whether a particular debt collection activity violates this policy, debt collectors should contact the Solicitor General with the Office of Attorney General prior to engaging in the activity.

This policy is based on portions of the Fair Debt Collection Practices Act. 15 USC §§ 1692-1692(o). The Fair Debt Collection Practices Act has not been adopted as the policy for several reasons. First, debt collectors employed by a state are exempt by law from the Fair Debt Collection Practices Act. Second, the Act deals only with consumer debts, while debt collectors deal primarily with nonconsumer debts. Third, debtors have not made any significant number of complaints about abusive debt collection practices and the collection efforts are successful.

This policy does not create any rights or claims whatsoever for third parties. No actions may be brought against the State, a State entity, or debt collectors by third parties based on this policy.

Violations of this policy by debt collectors may result in disciplinary action brought by the State entity authorizing the debt collector to engage in the debt collection activity, including, but not limited to, immediate suspension or termination of appointment, employment, or representation.

DEFINITIONS

- (1) The terms "communication" and "communicating" mean the conveying of information regarding a debt directly or indirectly to a person through a medium.
- (2) The term "State" means the State of North Dakota.
- (3) The term "State entity" includes, but is not limited to, an agency, authority, board, body, branch, bureau, commission, committee, council, department, division, industry, institution, instrumentality, and office of the State.
- (4) The term "debtor" means a person obligated or allegedly obligated to pay a debt to the State or a State entity.

- (5) The term "creditor" means the State or a State entity to which a debt is owed or allegedly owed.
- (6) The term "debt" means an obligation or alleged obligation of a debtor to pay money to the State or a State entity, whether or not such obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (7) The term "debt collectors" means all assistant attorneys general, all special assistant attorneys general, and all persons appointed, employed, or hired to represent the Office of Attorney General, Bank of North Dakota, Child Support Enforcement Division of the Department of Human Services, Health Department, Insurance Department, Job Service North Dakota, Labor Department, Office of State Tax Commissioner, Workers Compensation Bureau or any other State entity that adopts this policy, who collect or attempt to collect, directly or indirectly, a debt owed or due.
- (8) The term "person" means an individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity.

ACQUISITION OF INFORMATION

Debt collectors communicating with a person other than the debtor to collect a debt shall identify themselves, state the nature of the communication and, if expressly requested or for any other appropriate reason, identify their employer. This section does not apply to debt collectors engaging in investigatory or other activities that are not directly related to the collection of a debt. This section also does not apply if such disclosure is prohibited by law.

COMMUNICATION IN CONNECTION WITH DEBT COLLECTION

Without the prior consent of the debtor or third party given directly or indirectly to debt collectors, the express permission of a court of competent jurisdiction, or other applicable law, debt collectors may not communicate with a debtor or third party in connection with the collection of a debt:

- (1) at an unreasonable time or place. In the absence of contrary knowledge, debt collectors shall assume the reasonable time for communicating with a debtor or third party is after 7 o'clock a.m. and before 9 o'clock p.m. local time at the debtor's or third party's location; or
- (2) at the debtor's or third party's current place of employment, if debt collectors know that the employer prohibits such communication. Even if the employer prohibits such communication, debt collectors may communicate with the debtor or third party at his or her current place of employment if reasonable attempts to contact the debtor or third party at other reasonable places, including his or her residence, have been unsuccessful. This subsection does not apply if the employer is the debtor.

HARASSMENT OR ABUSE

Debt collectors may not engage in conduct the natural consequence of which is to harass, oppress, or abuse a person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The use or threat to use violence or other criminal means to cause physical harm to the physical person, person's family, or person's property;
- (2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader; or
- (3) Causing a telephone to ring or engaging a person in telephone conversations repeatedly or continuously with the intent to annoy, abuse, or harass a person at the called number.

FALSE OR MISLEADING REPRESENTATIONS

Debt collectors may not intentionally use a false, deceptive, or misleading representation or means in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- A false representation of:
 - the character, or amount of a debt; or

- services rendered or compensation which may be lawfully received by debt collectors for the collection of a debt;
- A threat to take an action that cannot be taken legally or that is not intended to be taken;
- A false representation that a sale, referral, or other transfer of an interest in a debt shall cause the debtor to:
 - lose a claim or defense to payment of the debt; or
 - become subject to a practice prohibited by this policy;
- A use of a false representation or deceptive means to collect or attempt to collect a debt or to obtain information concerning a debtor;
- A false representation that accounts have been turned over to innocent purchasers for value;
- A false representation that documents are legal process;
- A false representation that documents are not legal process or do not require action by the debtor;
- A false representation that debt collectors operate or are employed by a debtor reporting agency or collection agency; or
- A false representation that a person other than the creditor is participating in the collection of a debt, when in fact such person is not participating.

UNFAIR PRACTICES

Debt collectors may not use unfair or unconscionable means to collect or attempt to collect a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) Collecting an amount (including interest, fees, charges, or expenses incidental to the debt) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. If an amount (including interest, fees, charges, or expenses incidental to the debt) is expressly authorized by the agreement creating the debt, but is expressly prohibited by law, the law prevails;
- (2) Soliciting a postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;
- (3) Causing charges to be made to a person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees; or
- (4) Communicating with a debtor or third party regarding a debt by post card.

LEGAL ACTIONS BY DEBT COLLECTORS

Debt collectors who bring a legal action on a debt against a debtor shall:

- a. in the case of an action to enforce an interest in real property securing the debtor's obligation, bring such action in a judicial district in which such real property is located or in any other judicial district expressly authorized by the agreement creating the debt. If venue in a judicial district other than the judicial district in which the real property is located is expressly authorized by the agreement creating the debt, but is expressly prohibited by law, the law prevails;
- b. in the case of an action against a nonresident debtor, bring such action in any judicial district allowed by law; or
- c. in the case of an action not described in subparagraphs (a) and (b), bring such action only in the judicial district:
 1. in which such debtor signed the agreement creating the debt or incurred the debt sued upon;
 2. in which such debtor resides or does business at the time of commencement of the action; or
 3. in any other judicial district as allowed by law, if the debtor consents to venue in that district
- d. Nothing in this policy shall be construed to authorize non-attorney debt collectors to engage in the unauthorized practice of law.