

**PROPOSED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R111-06

May 31, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-4, 6, 7 and 15-22, NRS 649.053; §5, NRS 649.053, 649.171, 649.215 and 649.395; §§8 and 13, NRS 649.053 and 649.171; §9, NRS 649.053 and 649.355; §10, NRS 649.020 and 649.053; §§11 and 12, NRS 649.295; §14, NRS 649.297.

A REGULATION relating to collection agencies; establishing standards and procedures for the licensing and regulation of collection agencies, managers of collection agencies and foreign collection agencies; establishing certain fees; and providing other matters properly relating thereto.

Section 1. Chapter 649 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

Sec. 2. *“Collection agency” means a person or entity which is licensed pursuant to NRS 649.075 to 649.167, inclusive.*

Sec. 3. *“Foreign collection agency” means a person or entity which holds a certificate of registration pursuant to NRS 649.171.*

Sec. 4. *A person shall not conduct business as a collection agency in this State unless:*

1. He possesses each license or permit required by this chapter, chapter 649 of NRS or a local governmental entity; and

2. The location of the collection agency complies with all applicable planning and zoning ordinances.

Sec. 5. The Commissioner of Financial Institutions may revoke or suspend the license of a collection agency, the certificate of registration of a foreign collection agency or a manager's certificate if the collection agency, foreign collection agency or manager violates any provision of this chapter or NRS 649.305 to 649.375, inclusive, including, without limitation, a provision that imposes a fee or assessment. A revocation or suspension of a license or certificate must be made in accordance with the procedures set forth in chapter 649 of NRS.

Sec. 6. Except as otherwise provided in section 7 of this regulation or by specific statute, all papers, documents, reports and other written instruments filed with the Division of Financial Institutions of the Department of Business and Industry pursuant to this chapter and chapter 649 of NRS are open to public inspection unless the Commissioner of Financial Institutions determines that the information is required to be withheld to protect the public welfare or the welfare of a collection agency, foreign collection agency or manager, as applicable.

Sec. 7. 1. If a collection agency, foreign collection agency or person with a manager's certificate, or an authorized representative of that collection agency, foreign collection agency or manager, fails to file a verified answer to a complaint within the time prescribed by the Commissioner of Financial Institutions pursuant to NRS 649.385, the collection agency, foreign collection agency or manager is deemed to have admitted to the allegations contained in the complaint.

2. Subject to the discretion of the Commissioner of Financial Institutions and except as otherwise provided in NRS 649.067 or other specific statute, a complaint filed with the Division of Financial Institutions of the Department of Business and Industry, any documents

filed with the complaint, and any report or information resulting from an investigation of a complaint are confidential.

Sec. 8. 1. *A foreign collection agency shall allow the examination, investigation or audit of any accounts, books and records by the Commissioner of Financial Institutions at any time. The Commissioner may revoke the certificate of a foreign collection agency that does not allow him to conduct an examination, investigation or audit of any accounts, books and records.*

2. In addition to all fees required by this chapter and chapter 649 of NRS, a foreign collection agency shall pay for the actual costs for travel in connection with any examination, investigation or audit conducted by the Commissioner of Financial Institutions.

3. A foreign collection agency shall provide to the Commissioner of Financial Institutions, annually and before renewal of its certificate, a copy of all trust account statements at all banks and trust companies and a report of its financial standing which must be properly audited by a public accountant who holds a certificate to engage in the practice of public accounting in this State.

Sec. 9. *Each bank or credit union in which a collection agency maintains a separate account for purposes of NRS 649.355 must be insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.*

Sec. 10. 1. *In accordance with the definition of “collection agency” set forth in NRS 649.020, a community manager must be licensed as a collection agency pursuant to this chapter and chapter 649 of NRS if the community manager, or any employee, agent or*

affiliate of the community manager, performs or offers to perform any act associated with a foreclosure of a lien pursuant to NRS 116.31162 to 116.31168, inclusive.

2. As used in this section, “community manager” has the meaning ascribed to it in NRS 116.023.

Sec. 11. 1. *An application for licensure as a collection agency must be accompanied by a nonrefundable application fee of \$375.*

2. The applicant must pay an additional application fee of \$300 for each original license issued, of which not more than \$150 may be refunded by the Commissioner of Financial Institutions on a prorated basis if:

(a) The applicant withdraws his application before the Commissioner takes action on the application;

(b) The Commissioner deems the application withdrawn pursuant to NRS 649.196 because the applicant did not submit all required information and fees within the time specified; or

(c) The licensee surrenders his license during his first year of licensure.

3. *A collection agency shall pay the following fees:*

(a) To renew a license, \$375;

(b) For a duplicate license or a license for a transfer of location, \$15;

(c) For each application for a permit to operate a branch office of a licensed collection agency, \$190; and

(d) To renew a permit to operate a branch office of a licensed collection agency, \$150.

Sec. 12. 1. *An application for a manager’s certificate must be accompanied by:*

(a) A nonrefundable fee of \$190; and

(b) A nonrefundable investigation fee of \$115.

2. *An applicant must pay an additional application fee of \$30 for issuance of the certificate.*

3. *The annual renewal fee for a manager's certificate is \$30.*

4. *For each manager's certificate that is reinstated, the holder of the certificate shall pay a fee of \$45.*

Sec. 13. *1. An application for a certificate of registration as a foreign collection agency must be accompanied by an application fee of \$500. The Commissioner of Financial Institutions may refund not more than \$300 of the fee on a prorated basis if:*

(a) The applicant withdraws his application before the Commissioner takes action on the application;

(b) The Commissioner withdraws the application because the applicant did not submit all information and fees within the time specified; or

(c) The foreign collection agency surrenders its certificate of registration during its first year of registration.

2. *The holder of a certificate of registration as a foreign collection agency must pay a fee of \$200 to renew the certificate of registration.*

3. *A certificate of registration as a foreign collection agency must not be reinstated after it expires or has been revoked by the Commissioner of Financial Institutions.*

4. *A certificate of registration as a foreign collection agency is not transferable.*

Sec. 14. *The holder of a license or a manager's certificate who fails to submit a report required pursuant to this chapter or chapter 649 of NRS on or before the applicable due date for the report will be fined \$10 per day until the report is properly submitted to the Commissioner of Financial Institutions.*

Sec. 15. *A person who is not required to obtain a license as set forth in NRS 649.075 must obtain an exemption from the Commissioner of Financial Institutions certifying that he is not required to obtain a license. The exemption must be obtained before he engages in collection activities governed by chapter 649 of NRS.*

Sec. 16. *Each manager holding a manager's certificate issued pursuant to chapter 649 of NRS shall notify the Commissioner of Financial Institutions in writing of any change of employment within 10 days after the change.*

Sec. 17. NAC 649.010 is hereby amended to read as follows:

649.010 As used in ~~[NAC 649.010 to 649.050, inclusive,]~~ *this chapter*, unless the context otherwise requires, the words and terms defined in NAC 649.020 ~~[to 649.040, inclusive,]~~, *649.030 and 649.040 and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 18. NAC 649.050 is hereby amended to read as follows:

649.050 1. All machine derived form letters must be submitted to the ~~[Administrator]~~ *Commissioner of Financial Institutions* for review and approval before their actual use by the collection agency.

2. No collection agency may use any machine derived form letter unless it has received prior written approval from the ~~[Administrator.]~~ *Commissioner of Financial Institutions.*

Sec. 19. NAC 649.060 is hereby amended to read as follows:

649.060 1. The Commissioner of Financial Institutions will charge and collect a fee of ~~[\$50]~~ *\$60* per hour from each collection agency for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 649 of NRS.

2. The Commissioner *of Financial Institutions* will bill each collection agency upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date *on which* the bill is received. ~~[Except]~~ *In addition to any other fee allowed by this chapter or chapter 649 of NRS, and except* as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a collection agency to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

Sec. 20. NAC 649.070 is hereby amended to read as follows:

649.070 1. Except as otherwise provided in NAC 658.030, each primary and secondary collection agency shall pay to the Division of Financial Institutions of the Department of Business and Industry an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.

2. The Division ~~[will]~~ *shall* bill each collection agency for the assessment. The assessment must be paid within 30 days after the date *on which* the bill is received.

3. ~~[A]~~ *In addition to any other fee allowed by this chapter or chapter 649 of NRS, a* charge of 10 percent of the assessment will be imposed on any collection agency whose assessment is received by the Division after the date on which the assessment is due.

Sec. 21. NAC 649.100 is hereby amended to read as follows:

649.100 1. The person who holds a valid manager's certificate and who is *the* designated ~~[as agency]~~ manager *of a collection agency* must *have direct supervisory responsibility for*

employees who engage in collections in this State and must be required to devote a substantial portion of each business ~~[day in]~~ *hour*:

(a) *In supervision of those employees engaging in collections in this State; and*

(b) *In the actual management, operation and administration of the licensed agency.*

2. The manager must be available in person at the business address of the agency in order to perform his required functions and duties.

Sec. 22. NAC 649.110 is hereby amended to read as follows:

649.110 1. No person may serve as manager of more than one primary collection agency at the same time.

2. No person may serve as manager of more than one secondary collection agency at the same time.

3. At the discretion of the ~~[Administrator,]~~ *Commissioner of Financial Institutions*, upon application and his written approval first obtained, a ~~[licensed]~~ *manager of a* collection agency ~~[manager]~~ may serve as manager of one primary collection agency and one secondary collection agency at the same time.

4. The approval may be revoked by the ~~[Administrator]~~ *Commissioner of Financial Institutions* at any time if he finds that:

(a) Confusion may exist in the mind of the public in dealing with the collection agencies having common management.

(b) The various business functions of the collection agencies operating under common management are likely to be, or are being merged or commingled, or are otherwise being conducted, in the ~~[Administrator's]~~ *Commissioner's* opinion, in a manner which may be deleterious or damaging to the best interests of the public or the collection agency industry.

(c) Improper or abusive collection methods are being used by either or both of the collection agencies operating under common management.

(d) Either or both of the collection agencies operating under common management are not conducting their affairs in compliance with chapter 649 of NRS or any of the regulations of the ~~Administrator~~ *Commissioner* adopted under that chapter.

(e) Insufficient time is being devoted by the manager to the affairs of one or the other collection agencies operating under common management.