



GALE A. NORTON  
Attorney General

STEPHEN K. ERKENBRACK  
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH  
Solicitor General

**STATE OF COLORADO**  
**DEPARTMENT OF LAW**  
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING  
1525 Sherman Street - 5th Floor  
Denver, Colorado 80203  
Phone (303) 866-4500  
FAX (303) 866-5691

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RE: Persons Required to be Licensed as a Colorado Collection Agency

Dear \_\_\_\_\_:

This letter responds to your request for an interpretation of whether Colorado's collection laws apply to out-of-state collection agencies and require Colorado Licensing.

In order to determine whether a person, firm, partnership or corporation is required to obtain a collection agency license in Colorado, the following determinations need to be made. First, is the business a "collection agency" under the Colorado Fair Debt Collection Practices Act ("Colorado Act"). Second, if the entity meets the definition of a "collection agency," is it then excluded from the definition of a "collection agency" under the Colorado Act. Third, if the entity does not fall within one of the exemptions to the statutory definition, whether a collection agency license is required.

**Definition of "Collection Agency"**

According to § 12-14-102(1) of the Colorado Act, a "collection agency" is:

1. Any person, firm, corporation or partnership:
  - a. Whose principal business is the collection of consumer debts,<sup>1</sup> or;

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<sup>1</sup> Attorneys regularly engaged in consumer debt collection are subject to the Colorado Act. However, lawyers licensed by the Colorado Supreme Court as attorneys are not required to obtain a license, and complaints regarding such persons are forwarded both to the Federal Trade Commission which enforces the similar federal act that includes attorneys within its scope and to the Disciplinary Counsel of the Colorado Supreme Court as required by § 12-14-

- b. Which regularly collects or attempts to collect debts owed, due, or claimed to be owed or due another person,<sup>2</sup> or;
- c. Which takes assignment of claims for the purpose of collecting such claims, or;
- d. Which solicits claims for the collection of consumer debts owed, due or asserted to be owed or due another person.

**Exclusions from the Definition of a "Collection Agency"**

By its terms, the definition of collection agency includes many traditional businesses. However, the Colorado Act then goes on to exempt a large number of businesses from its scope. The following are not collection agencies under the Colorado Act:

- 1. An officer or employee of a creditor collecting in the name of the creditor.<sup>3</sup> This exemption does not apply if the creditor uses a third-party name or a trade name to collect its own debts, unless all communications indicate the connection and relationship to the creditor.
- 2. A person who collects for another person if:

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117 of the Colorado Act. It is unclear whether an attorney licensed in another state but collecting debts here is also exempt from the Colorado Act's licensure provisions. See § 12-14-102(2), C.R.S. (1991).

<sup>2</sup> Note that under the Colorado Act, a consumer debt includes a business debt of a natural person. Commercial collectors are therefore required to obtain a Colorado collection agency license for debts to be collected from a sole proprietor, partner, or person giving a personal guarantee on a corporate debt. The Federal Fair Debt Collection Practices Act definition includes only consumer debts and exempts commercial debt collection from its scope. Compare §§ 12-14-103(4) and (6), C.R.S. (1991) to 15 U.S.C. §§ 1692a(3) and (5).

<sup>3</sup> "Creditor" means any person, firm, corporation, or partnership which offers or extends credit creating a debt or to which a debt is owed, but such term does not include any person, firm, corporation, or partnership to the extent that it receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

- a. the two persons are commonly owned or corporately affiliated;
  - b. the person collecting for another person collects only for persons to whom it is so related; and
  - c. the principal business of the person acting as a collector is not the collection of debts.
3. State and federal officials performing their official duties, i.e., government "in-house" collection departments and sheriffs.
  4. Process servers in connection with a suit on a debt.
  5. Bona-fide non-profit consumer credit counselors or debt adjustment bureaus. A for-profit counseling service is subject to the Colorado Act.
  6. A person collecting a debt for another if the collection activities are performed pursuant to a bona fide fiduciary obligation or escrow, i.e., bank trust departments and escrow companies.
  7. A person collecting a debt for another if the person extends credit and is collecting on a debt it originally extended, i.e., a retailer that assigns its retail credit contracts to a bank, but retains responsibility for collecting delinquent assigned accounts; a mortgage service company that remains responsible for collecting a mortgage it originates, but no longer owns.
  8. A person collecting a debt for another if the debt was not in default at the time such person obtained it. Whether or not the debt was in default is a factual question depending on the creditor's definition of default, any contract definition, and the creditor's actions regarding the debt (charged off, given to "hard-core" collections, no future extensions of credit, reported to a credit bureau, etc.).
  9. A person collecting a debt for another if such person is a secured party of the creditor in a commercial credit transaction and is collecting or attempting to collect the creditor's debt. For instance, retailers and lenders sometimes use their accounts receivable as collateral for their own business loans. If the creditor defaults, the secured party collects the payments due on the retailer's or lender's consumer accounts

receivables. In such situation, the secured party is not a debt collector.

10. Any person whose principal business is the making of loans or the servicing of debt not in default, if such person acts as a:
  - a. loan correspondent;
  - b. seller and servicer for the owner; or
  - c. holder of a debt which is secured by a deed of trust on real property.

The exemptions to the Colorado Act's definition of collection agency are found in § 12-14-103(2)(b).

#### Licensing Chart

Most entities which are collection agencies are required to obtain a Colorado collection agency license. The following licensing chart outlines which collection agencies (as defined above) are required to obtain a license under the Colorado Act. In order to use the chart, one needs to know the following facts: (1) the location of the collector's office; (2) the residences of consumers from whom the collector is collecting; (3) the business location of creditors on whose behalf a collector is collecting; and (4) the nature and regularity of the collector's collection activities within Colorado.

<u>Collector</u>	<u>Consumer</u>	<u>Creditor</u>	<u>Act</u>	<u>License</u>
In Colorado	In Colorado or Out-of- State	N/A	N/A	Yes
Out-of-State	In Colorado or Out-of- State	In Colorado	Collects or attempts to collect for Colorado creditors	Yes
Out-of-State	In Colorado	Out-of-State	<u>Regularly</u> collects or attempts to	Yes

			collect <sup>4</sup> in Colorado	
Out-of-State	In Colorado or Out-of- State	Place of Business in Colorado	Solicits or attempts to solicit claims in Colorado	Yes

There have been various attempts to amend the scope of the Colorado Act so as to exempt out-of-state collection agencies from its licensing requirements and enact "open borders" legislation. To date, none of these attempts have been successful.

Please feel free to contact me if you have any questions about this matter.

Sincerely yours,



LAURA E. UDIS  
Executive Director  
Colorado Collection Agency Board  
(303) 866-5304

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<sup>4</sup> A factual issue is presented with regard to whether or not a collector "regularly" collects or attempts to collect from consumers in Colorado. Of course, one instance of collection would not meet the definition of "regularly" and 365 instances would certainly qualify as "regularly". For this office's enforcement purposes "regularly" means "more than a handful" of times, approximately 10 to 25 per year. This rule of thumb may be affected by other relevant facts such as the number, percentage, and regularity of Colorado accounts compared to the rest of the collection agency's business.