



## New Mexico Collection Agency Regulatory Act

### Section

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### 61-18A-1. Short title.

This act [[61-18A-1](#) NMSA 1978] may be cited as the "Collection Agency Regulatory Act."

### 61-18A-2. Definitions.

As used in the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978]:

- A. "division" means the financial institutions division of the regulation and licensing department;
- B. "director" means the director of the financial institutions division of the regulation and licensing department;
- C. "collection agency" means any person engaging in business for the purpose of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, where such person is so engaged by two or more creditors. The term also includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. The term does not include:
  - (1) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
  - (2) any person while collecting debts for another person, both of whom are related by common ownership or affiliated by corporate control, if the person collects debts only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
  - (3) any officer or employee of the United States, any state or any political subdivision thereof to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
  - (4) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
  - (5) any nonprofit organization which, at the request of debtors, performs bona fide consumer credit counseling and assists debtors in the liquidation of their debts by receiving payments from such debtors and distributing such amounts to creditors;
  - (6) any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; and
  - (7) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due to another to the extent such activity:
    - (a) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
    - (b) concerns a debt which was originated by such person;
    - (c) concerns a debt which was not in default at the time it was obtained by such person;
    - or
    - (d) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor;

- D. "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium;
- E. "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another;
- F. "debt" means any obligation or alleged obligation of a debtor to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment;
- G. "debt collector" means a collection agency, a reposessor, a manager, a solicitor and any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client;
- H. "debtor" means any natural person obligated or allegedly obligated to pay any debt;
- I. "location information" means a debtor's place of abode and his telephone number at such place or his place of employment;
- J. "manager" means a natural person who qualifies under the Collection Agency Regulatory Act to be in full-time charge of a licensed collection agency, and to whom a manager's license has been issued by the director;
- K. "person" means an individual, corporation, partnership, association, joint-stock company, trust where the interests of the beneficiaries are evidenced by a security, unincorporated organization, government or political subdivision of a government;
- L. "reposessor" means a person engaged solely in the business of repossessing personal property for others for a fee. The term does not include a duly licensed collection agency; and
- M. "solicitor" means a natural person who, through lawful means, communicates with debtors or solicits the payment of debts for a collection agency licensee by the use of telephone, personal contact, letters or other methods of collection conducted from and within the licensee's office.

### **61-18A-3. Administration and enforcement.**

The administration and enforcement of the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] shall be vested in the office of the director as hereinafter set forth.

- A. The director shall investigate violations or alleged violations of the Collection Agency Regulatory Act by persons engaged in business as collection agencies or repossessors who fail to obtain licenses.
- B. The director may examine the business and the books, accounts, records and files used therein by a collection agency licensee and for such purpose the director shall have free access to the offices, places of business, books, accounts, records, papers, files, safes and vaults of all licensees and other persons engaging or attempting to engage in business as a collection agency.
- C. Any examination reports or other documents or information developed in administration of this section are confidential and not subject to subpoena.

### **61-18A-4. Rules and regulations; violations.**

- A. The director shall establish and enforce such rules and regulations as may be reasonable or necessary for the examination and licensing of collection agencies, repossessors, managers and solicitors, for the conduct of such persons and for the general enforcement of the various provisions of the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] in the protection of the public.
- B. The violation of any provisions of that act or of any rules and regulations established by the director is sufficient ground for revocation of any license or for other disciplinary action.
- C. No provision of the Collection Agency Regulatory Act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the director, notwithstanding that after such act or omission has occurred, such rule or regulation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

**61-18A-5. Unlawful to conduct collection agency or engage in the business of a reposessor without license.**

- A. No person shall conduct within this state a collection agency, act as a collection agency manager or engage within the state in the business of collecting claims for others or of soliciting the right to collect or receive payment from another of any claim or advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment for another of any claim or seek to make collection or obtain payment of any claim on behalf of another without having first applied for and obtained the licenses required by the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978].
- B. No person shall conduct within this state the business of a reposessor without having first applied for and obtained a reposessor's license.
- C. No person shall be considered to be engaged in collection activity within this state if that person's activities regarding this state are limited to collecting debts not incurred in New Mexico from debtors located in this state by means of interstate communications, including telephone, mail or facsimile transmission, from the person's location in another state.

**61-18A-6. Penalty for violations.**

- A. In addition to any other penalty, any person or any officer or director of any partnership, corporation or association conducting business as a collection agency or reposessor without first having been licensed pursuant to the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] or who carries on such business after the revocation or expiration of any license which the director has refused to renew, is guilty of a fourth degree felony.
- B. Any person violating any other provision of that act is guilty of a misdemeanor.

**61-18A-7. Application for license.**

Application for a collection agency license, reposessor's license or manager's license shall be made to the director in such form as may be required by the director.

#### **61-18A-8. Applications; required information.**

The application for a collection agency license shall state, among other things that may be required, the name of the applicant together with the name under which the applicant will do business and the location by street number and city in this state of the office of the business for which the license is sought.

In the case of an individual, the application shall state the full residence address of the applicant; in the case of a partnership, the application shall state the true names and complete residence addresses of all partners; in the case of a corporation, the application shall state the true names and complete residence addresses of all directors and officers, the true names and residence addresses of all holders of ten percent or more of the corporation's outstanding stock and other securities and the number of shares or units of each and of all classes held by each and the total number of shares or units of each class issued and outstanding; and in the case of a non-stock corporation or an unincorporated association, the true names and complete residence addresses of all officers, directors and trustees.

The application shall state the name of the licensed manager who will be actively in charge of the collection agency for which the license is sought.

#### **61-18A-9. Financial statement.**

The application for a collection agency license shall be accompanied by a financial statement of the applicant up to not more than sixty days prior to date of application for a new license or renewal, showing the assets and liabilities of the applicant and truly reflecting that that applicant's net worth is not less than the sum of ten thousand dollars (\$10,000), and that its liquid assets are not less than one thousand dollars (\$1,000) available for use in licensee's business. The financial statement shall be sworn to by the applicant, if the applicant is an individual or by a partner, director, manager or trustee in its behalf, if the applicant is a partnership, corporation or unincorporated association. The information contained in the financial statement shall be confidential and not a public record.

**61-18A-10. Manager's license and examination.**

- A. An applicant for a manager's license shall be examined concerning his competency, experience and knowledge of law and regulations by the director and on such pertinent subjects as the director shall require.
- B. Examinations shall be practical in character and of such length, scope and character as the director deems necessary to determine the fitness of applicants to engage in the general collection agency business. Both questions and answers shall be in the English language.
- C. The director shall prepare or cause to be prepared all examination material. The number and character of the questions, examination procedure, method of grading and the passing grade to be attained by successful applicants shall be determined by the director.
- D. The examination papers of any person shall be kept for a period of one year and may then be destroyed. The examination papers shall be open to inspection during the one-year period only by the director, the staff of the financial institutions division of the regulation and licensing department and by the applicant or by someone appointed by the latter to inspect them, or by a court of competent jurisdiction in a proceeding where the contents of the papers are properly involved.

**61-18A-11. Qualification of manager applicants.**

The licensed manager to be actively in charge of a collection agency shall:

- A. be a citizen of the United States;
- B. have reached the age of majority;
- C. not have been convicted of a felony or crime involving moral turpitude;
- D. be a graduate of a high school or provide proof to the director that he is possessed of the equivalent of a high school education;
- E. pass the examination required;
- F. have been actively and continuously engaged or employed in the collection of accounts receivable for at least two of the five years next preceding the filing of the application; and
- G. have a good credit record.

#### **61-18A-12. Approval of applications.**

No application for license shall be approved by the director unless the applicant has met all requirements of the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] and any rules and regulations established thereunder. When said requirements have been met, the director shall grant and issue a license in the form provided by the Collection Agency Regulatory Act.

#### **61-18A-13. Denial of applications.**

The director may deny any license:

- A. if the applicant has ever had a license or its equivalent revoked;
- B. if the applicant is or was a partner, officer, director, trustee, manager or stockholder of any partnership, corporation or unincorporated association the license of which has been revoked;
- C. if the applicant or a partner, officer, director, trustee, stockholder or employee of the applicant has been convicted of a felony or any crime involving moral turpitude; or
- D. if the applicant has violated any provision of the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] or rules and regulations established thereunder.

#### **61-18A-14. License to foreign corporation or partnership.**

No collection agency license shall be issued to any foreign corporation or partnership unless it has fully complied with the laws of the state of New Mexico so as to entitle it to do business within this state, and provided further that such foreign corporation or partnership shall establish and maintain a full time bona fide collection agency in this state at all times during the life of any license issued to it. All records of such local collection agency must be maintained at the principal office in New Mexico of such agency.

#### **61-18A-15. Surety bond.**

- A. Prior to the issuance of any collection agency or reposessor's license or renewal thereof a surety bond in the penal sum of five thousand dollars (\$5,000), which may by regulation or order of the director be increased, shall be filed with the division. The bond shall run to the people of the state of New Mexico, shall be executed and acknowledged by the applicant as principal and by a corporation which is licensed by the superintendent of insurance of this state to transact the business of fidelity and surety insurance, as surety.



- B. The surety bond shall provide for suit thereon by any person who has a cause of action under the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] or rules and regulations established thereunder.
- C. No action shall be brought upon any bond after the expiration of three years from the date of the occurrence of the act upon which a claim is based.
- D. The bond shall be continuous in form and remain in full force and effect concurrently with the license and any renewals thereof unless terminated or canceled by action of the surety as provided in the Collection Agency Regulatory Act.
- E. Upon the filing of thirty days' written notice with the director by any surety company of its withdrawal as the surety of any licensee, the director shall forthwith give notice to the licensee of the withdrawal which notice shall be by certified mail with request for return receipt and shall be addressed to the licensee at its main office in New Mexico as shown by the records of the director. The license of any licensee shall be void upon the termination of the bond by the surety company unless, prior to termination, a new bond has been filed with the division.
- F. Should the license of any company to transact fidelity and surety insurance business in this state be canceled, revoked or otherwise terminated, all collection agency bonds for which such surety company is surety are thereupon and thereby canceled. Upon such cancellation, the license of any licensee having such a bond posted is suspended and shall remain suspended until a new and valid bond is filed, provided however that failure of any such licensee to file a new bond within thirty days after being advised by the director in writing of the necessity of doing so shall ipso facto revoke the license.

**[61-18A-16. Information to be included in collection agency license.](#)**

The license when issued shall state:

- A. that it is issued pursuant to the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] and the rules and regulations established thereunder and that the licensee is duly authorized to conduct business under the Collection Agency Regulatory Act;
- B. the names of the owners of the licensee, if a sole proprietorship or partnership; and if a corporation, the name shall be followed by the words "a corporation";
- C. the name under which the licensee is to operate;
- D. the location by street number, city, county and state where the licensee is to conduct business; and
- E. the number and the date of the license.

#### **61-18A-17. Right granted by license.**

Upon receipt of the license, the licensee has the right to conduct the business of a collection agency, reposessor, manager or solicitor with all the powers and privileges applicable thereto, contained in but subject always to all the provisions of the Collection Agency Regulatory Act [[61-18A-1 NMSA 1978](#)] and any rules and regulations established thereunder.

#### **61-18A-17. Right granted by license.**

Upon receipt of the license, the licensee has the right to conduct the business of a collection agency, reposessor, manager or solicitor with all the powers and privileges applicable thereto, contained in but subject always to all the provisions of the Collection Agency Regulatory Act [[61-18A-1 NMSA 1978](#)] and any rules and regulations established thereunder.

#### **61-18A-19. Change of location; ownership or name; duplicate license.**

- A. Upon any change of street address from that stated in the collection agency or reposessor license or any change of the business name therein shown, the licensee shall, within five days thereafter, deposit the license and written notification of the change of address or name, together with the duplicate license fee with the director.

The director shall there upon enter the change in his records, retain and file the surrendered license and issue to the licensee a duplicate license setting forth the new name or address, or both, but bearing the same date and number as the surrendered license.

If the license is not deposited with the director within the time prescribed, then upon the lapse of the five-day period the license shall be and remain suspended until so deposited.

- B. Upon any change of ownership of a licensee, if a sole proprietorship or partnership, or upon any change of ownership of more than fifty percent of the shares or voting rights, if a corporation, all licenses issued to a licensee are void unless, prior to such change of ownership, the prospective new owners have notified the director of the proposed acquisition have satisfied the director that they qualify to be licensed pursuant to the Collection Agency Regulatory Act [[61-18A-1 NMSA 1978](#)].
- C. Every licensed corporation and unincorporated association shall promptly file with the director a written report of any transfer, issuance, cancellation or redemption of stock voting rights or membership amounting to ten percent or more of the total voting stock or memberships then outstanding.

### **61-18A-20. Temporary license.**

For the purpose of winding up the affairs and discontinuance or sale of the business of a licensee, in the event of death of the licensed manager or dissolution of a partnership, the director shall, upon proper application, issue a temporary license to the personal representative or, to the nominee of the personal representative of the deceased or to a surviving partner in the case of the dissolution of a partnership. The application shall be in writing, subscribed and sworn to by the person to whom the temporary license is to be issued. The application shall be accompanied by the temporary license fee specified in the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978]]. A temporary license shall be effective for a period of one year and shall not thereafter be renewed or continued.

### **61-18A-21. Branch office.**

Application for a license for a branch office or offices may be made by any licensee. The application shall state the location and address of the branch office and the name and address of the person to be actively in charge. The application shall be accompanied by a rider or endorsement to the licensee's surety bond increasing the penal sum of the bond by five thousand dollars (\$5,000) and a license fee in the same amount as required for the principal office.

### **61-18A-22. Office management; license.**

- A. Every licensed office of a collection agency whether a principal or branch office shall be under the active charge of a licensed manager. Each manager's license shall be issued by the director upon qualification by the applicant for same and shall be renewed annually upon application therefor accompanied by the manager's renewal license fee, which application is to be filed with the division on or before May 31 of each year. Unless so renewed, each manager's license shall expire on June 30, unless previously revoked or canceled.
- B. As used in this section, "under the active charge of a licensed manager" means that a licensed manager must be physically present at the licensee's office at least seventy-five percent of the time during which the office is open for business.

### **61-18A-23. Loss of qualified person.**

Whenever a licensed manager ceases to be in charge of an office, the licensee shall notify the director in writing within ten days from such cessation.

If the notice is given, the collection agency license shall remain in force for a reasonable period to be determined by the rules and regulations. If the licensee fails to give the notice as required at the end of the ten-day period the collection agency license shall be ipso facto suspended, but the license shall be reinstated upon the filing of an affidavit by the licensee to the effect that the person formerly in charge of the office has been replaced by a licensed manager.

#### **61-18A-24. Repealed.**

#### **61-18A-25. Unauthorized practice as collection agency.**

No person, who is not a duly licensed and qualified collection agency, shall print, publish or otherwise prepare for distribution any system of collection letters, demand forms or other printed matter upon his stationery or upon stationery upon which the said person's name appears in such a manner as to indicate that a demand is being made by such person for the payment of any sums due or asserted to be due, where such forms containing such message are to be sold or furnished to anyone by such other person at any address different from the address of the person issuing such system of collection letters, demand forms or other printed material.

#### **61-18A-26. Assignments; right to sue.**

Nothing in the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] shall be construed to prevent collection agencies from taking assignments of claims in their own name as real parties in interest for the purpose of billing and collection and bringing suit in their own names thereon, provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a duly authorized and licensed attorney-at-law. In such suit, the court may, in its discretion, authorize payment of reasonable attorney fees and costs to the prevailing party.

#### **61-18A-27. Renewal of license; fee.**

A licensee desiring renewal of his license shall, on or before May 31 of each year, file with the director an application for renewal on such forms as may be designated by the director. The application shall be accompanied by the renewal fee.

The director shall issue a renewal license which shall be dated July 1 next ensuing and shall bear the date to and including which the license is renewed.

#### **61-18A-28. Remittance of collections to clients.**

All collection agencies shall remit to their clients the proceeds of all collections, after deducting their commission, other lawful expenses and any amounts collected pursuant to [Section 61-18A-28.1](#) NMSA 1978, within forty days of such collection unless otherwise provided by regulation.

### **61-18A-28.1. Additional collection from debtors.**

- A. Unless the agreement between the debtor and the creditor or the agreement between the collection agency and the creditor otherwise expressly prohibits, a collection agency may collect from the debtor an amount equal to the gross receipts tax and the local option gross receipts taxes, as those terms are defined in the Gross Receipts and Compensating Tax Act [[7-9-1](#) NMSA 1978], imposed on the receipts of the collection agency that result from the collection of a debt from the debtor.
- B. For purposes of this section, a collection agency does not mean a person who collects his own debts using a name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

### **61-18A-29. Repealed.**

### **61-18A-30. Fees.**

The director shall charge and collect the following fees:

- A. an original license fee for a collection agency or branch thereof, of five hundred dollars (\$500);
- B. a renewal fee for a collection agency or branch thereof, of three hundred dollars (\$300);
- C. a duplicate license fee of fifteen dollars (\$15.00);
- D. a temporary license fee of thirty-five dollars (\$35.00);
- E. a delinquency fee of ten dollars (\$10.00) per day for each day of delinquency in filing applications for renewals;
- F. a manager's license examination fee of one hundred dollars (\$100);
- G. a manager's license renewal fee of fifty dollars (\$50.00);
- H. a fee of five dollars (\$5.00) for each copy of any issue or edition of the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] and rules and regulations;
- I. a fee of five dollars (\$5.00) for each list of licensees in good standing;

- J. a fee of two hundred dollars (\$200) per day or fraction thereof for each examiner of the financial institutions division of the regulation and licensing department engaged in an examination or investigation of a licensee, not to exceed five examiner-days per calendar year. If the examination or investigation is an out-of-state examination or investigation, the licensee shall reimburse the financial institutions division the actual travel costs incurred to perform the examination or investigation; and
- K. an original license fee or renewal license fee for a reposessor of two hundred fifty dollars (\$250).

**61-18A-31. Deposit of moneys in general fund.**

All money received under the Collection Agency Regulatory Act [[61-18A-1](#) NMSA 1978] by the director shall be deposited in the office of the state treasurer.

**61-18A-33. Grandfather clause.**

Any person properly licensed pursuant to the Collection Agency Act [[61-18A-1](#) NMSA 1978] on the effective date of the enactment of the Collection Agency Regulatory Act is eligible to be granted a license under the provisions of the Collection Agency Regulatory Act.