

**Proposed Administrative Rule Amendments
North Dakota Department of Financial Institutions**

**Title 13
Department of Financial Institutions**

| | |
|--------------|---|
| Article | |
| 13-01 | General Administration |
| 13-01.1 | Practice and Procedure |
| 13-02 | Banking and Savings and Loan Associations |
| 13-03 | Credit Unions |
| 13-04 | Consumer Finance |
| 13-05 | Money Brokers |
| 13-06 | Deferred Presentment Service Providers |
| 13-07 | Money Transmitters |
| <u>13-08</u> | <u>Mortgage Loan Originators</u> |

**CHAPTER 13-04-02
COLLECTION AGENCIES**

Section

| | |
|-------------|---|
| 13-04-02-01 | Definitions |
| 13-04-02-02 | Prohibited Advertising and Communications |
| 13-04-02-03 | Debt Collectors - Approval -Certificate |
| 13-04-02-04 | Prohibited Practices |
| 13-04-02-05 | Threats or Coercion Prohibited |
| 13-04-02-06 | Harassment or Abuse Prohibited |
| 13-04-02-07 | Unreasonable Publication Prohibited |
| 13-04-02-08 | Fraudulent, Deceptive, or Misleading Representations Prohibited |
| 13-04-02-09 | Unfair or Unconscionable Means Prohibited |
| 13-04-02-10 | Postal Violations Prohibited |
| 13-04-02-11 | Trust Account - Deposits - When To Be Made |
| 13-04-02-12 | Disbursements From the Trust Account |
| 13-04-02-13 | Receipts For Collection of Currency and Coin |
| 13-04-02-14 | Statement Furnished Upon Request |

Section 13-04-02-01 is amended as follows:

13-04-02-01. Definitions.

1. ~~"Claim" means any obligation or alleged obligation out of a consumer transaction.~~
2. ~~"Debt collection" means any action, conduct, or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a creditor by a consumer.~~

3. "Debt collector" means any collection agency, employee of a collection agency, and any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended or calculated to be used to collect claims; ~~except attorneys at law, licensed real estate brokers, banks, trust companies, building and loan associations, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of credit person upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court~~ debts and the person is required to be licensed under North Dakota Century Code chapter 13-05.
2. "Debtor" means any person who is subject to debt.
3. "Person" means a person as defined under North Dakota Century Code section 1-01-49.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-01, 13-05-02, ~~13-05-03, 13-05-04, 13-05-05, 13-05-06, 13-05-07, 13-05-08, 13-05-09, 13-05-10~~

Section 13-04-02-02 is amended as follows:

13-04-02-02. Prohibited advertising and communications. No collection agency or debt collector shall:

1. Publish or cause to be published any list of debtors, except for credit reporting purposes, advertise or threaten to advertise for sale any ~~claim~~ debt as a means of forcing payment thereof, or use similar devices or methods of intimidation.
2. Communicate with debtors in a misleading or deceptive manner by using the stationery of a lawyer, forms or instruments which only lawyers are authorized to prepare, or instruments which simulate the form and appearance of judicial process.
3. Exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so, and the agency's course of conduct is always consistent with a true relationship of attorney and client between the lawyer and the creditor.

4. Refuse to return any ~~claim or claims~~ debt and all valuable papers deposited with a ~~claim or claims~~ debt upon written request of the creditor, claimant, or forwarder after tender of such amounts due and owing to the agency within thirty days after such request; neglect, refuse, or intentionally fail to account to its clients for all money collected within forty-five days from the last day of the month in which the same is collected; or refuse or fail to furnish at intervals of not less than ninety days upon written request of the claimant or forwarder, a written report upon ~~claims~~ debts received from such claimant or forwarder.
5. In collection letters or publications, or in any communication, oral or written, threaten wage garnishment or legal suit without an objective intention to engage a lawyer and commence legal action upon the debtor's failure to comply with the request or demand made.
6. Use or employ constables, sheriffs, or any other officer authorized to serve legal papers in connection with the collection of a ~~claim~~ debt, except when performing their legally authorized duties.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-02, 13-05-06

Section 13-04-02-03 is amended as follows:

13-04-02-03. Debt collectors - Approval —Certificate. Licensed collection agencies may only appoint debt collectors who are of good moral character, are knowledgeable in collection agency practices and ethics, have a good credit reputation, and have a reputation for fair and honest dealings. The name and address of a person appointed as a debt collector must be forwarded to the department by the licensed collection agency. ~~The department, upon request by a collection agency located in North Dakota, may issue an identification card bearing the name of the debt collector and the name of the licensed collection agency. All debt collectors' identification cards are issued for an indefinite period. The identification cards of all debt collectors which are issued must be canceled and turned in to the department if the debt collector ceases to be employed by a licensed agency or upon cancellation of the agency's license.~~

History: Amended effective July 1, 1984; July 1, 1998; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-03(4)

Section 13-04-02-04 is amended as follows:

13-04-02-04. Prohibited practices. No debt collector may:

1. Perform legal services, furnish legal advice, or falsely represent, directly or by implication, that the debt collector is an attorney.
2. Solicit assignments of claims for the purpose of suit or at the instigation of an attorney.
3. Institute judicial proceedings on behalf of other persons except on an assigned ~~claim~~ debt.
4. Communicate with debtors in the name of an attorney or upon stationery or other written matter bearing an attorney's name.
5. Make any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a ~~claim~~ debt.
6. Violate sections 804 through 810 of the Federal Fair Debt Collection Practices Act [Pub. L. 90-321; 91 Stat. 876 through 880; 15 U.S.C. 1692b through 1692h].

History: Amended effective July 1, 1984; October 1, 1997; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-05 is amended as follows:

13-04-02-05. Threats or coercion prohibited. No debt collector may collect or attempt to collect any ~~money alleged to be due and owing~~ debt by means of any threat, coercion, or attempt to coerce. Without limiting the general application of the foregoing, no debt collector may:

1. Use, or expressly or implicitly threaten the use of violence or other criminal means, to cause harm to the person, reputation, or property of any person.
2. Accuse or threaten to accuse any person of fraud or any other crime, or any conduct which, if true, would tend to disgrace such other person, or in any way subject the person to ridicule or any conduct which, if true, would tend to disgrace the person, or in any way subject the person to the ridicule or contempt of society.
3. Make to another person, including any credit reporting agency, false accusations, or threats of false accusations, that a ~~consumer~~ debtor is willfully refusing to pay a just debt.

4. Threaten to sell or assign to another the obligation of the ~~consumer~~ debtor with an attending representation or implication that the result of such sale or assignment would be that the ~~consumer~~ debtor would lose any defense to the ~~claim~~ debt or would be subjected to harsh, vindictive, or abusive collection attempts.
5. ~~Threaten to take any action prohibited by law relating to the debt collector's conduct on the rights and liabilities of all parties~~ Represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends and is legally entitled to bring such action.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-06 is amended as follows:

13-04-02-06. Harassment or abuse prohibited. No debt collector may oppress, harass, or abuse any person in connection with the collection of or attempt to collect any ~~claim~~ debt alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, no debt collector may:

1. Use profane or obscene language or language that is intended to abuse the hearer or reader.
2. Place telephone calls without disclosure to the debtor of the caller's true identity, including name and collection agency.
3. Cause expense to any person in the form of long distance telephone tolls, telegram fees, or other charge incurred by a medium of communications, by concealment of the true purpose of the notice, letter, message, or communication.
4. Cause a telephone to ring or engage any person in telephone conversation repeatedly or continuously, or at unusual times or times known to be inconvenient.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-07 is amended as follows:

13-04-02-07. Unreasonable publication prohibited. No debt collector may unreasonably publicize information relating to any alleged indebtedness or debtor. Without limiting the general application of the foregoing, no debt collector may:

1. Communicate any information relating to a ~~consumer's~~ debtor's indebtedness to any employer or the employer's agent except as reasonably necessary for legal process or to effectuate a past judgment judicial remedy.
2. Disclose, publish, or communicate information relating to a ~~consumer's~~ debtor's indebtedness to any relative or family member of the ~~consumer~~ debtor, excluding the husband or wife, except through proper legal action or process or with the express consent of the debtor.
3. Disclose, publish, or communicate any information relating to a ~~consumer's~~ debtor's indebtedness to any other person, by publishing or posting any list of ~~consumers~~ debtors, commonly known as deadbeat lists, by advertising for sale any claim to enforce payment ~~thereof~~ of a debt, or in any manner other than through proper legal action, process, or proceeding.
4. Use any form of communication to the ~~consumer~~ debtor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged ~~claim~~ debt other than the return address and phone number of the debt collector.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-08 is amended as follows:

13-04-02-08. Fraudulent, deceptive, or misleading representations prohibited. No debt collector may use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect ~~claims~~ debts or to obtain information concerning ~~consumers~~ debtors. Without limiting the general application of the foregoing, no debt collector may:

1. Use any name while engaged in the collection of ~~claims~~ debts other than the debt collector's true name unless the assumed name is registered with the department as an alias for the debt collector.

2. Make misleading representations in any communication made to collect or attempt to collect a ~~claim~~ debt or to obtain or attempt to obtain information about a ~~consumer~~ debtor.
3. Falsely represent that the debt collector has information in the debt collector's possession or something of value for the ~~consumer~~ debtor in order to solicit or discover information about the ~~consumer~~ debtor.
4. Fail to clearly disclose the name and full business address of the person to whom the ~~claim~~ debt has been assigned or is owed at the time of making any demand for money.
5. Falsely represent or imply that any debt collector is vouched for, bonded by, affiliated with, or is an instrumentality, agent, or official of this state or any agency of federal, state, or local government.
6. Falsely represent the character, extent, or amount of a ~~claim~~ debt against a ~~consumer~~ debtor, or of its status in any legal proceeding.
7. Use, distribute, or sell any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval.
8. Represent that an existing obligation of the ~~consumer~~ debtor may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation.
9. Falsely represent, or give a false impression about the status or true nature of or the services rendered by the debt collector or the debt collector's business.

History: Amended effective July 1, 1984; October 1, 1997; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-09 is amended as follows:

13-04-02-09. Unfair or unconscionable means prohibited. No debt collector may use unfair or unconscionable means to collect or attempt to collect any ~~claim~~ debt. Without limiting the general application of the foregoing, no debt collector may:

1. Seek or obtain any written statement or acknowledgment in any form that specifies that a ~~consumer's~~ debtor's obligation is one incurred for

necessaries of life where the original obligation was not in fact incurred for such necessities.

2. Seek or obtain any written statement or acknowledgment in any form containing an affirmation of any obligation by a ~~consumer~~ debtor who has been declared bankrupt, without clearly disclosing the nature and consequences of such affirmation and the fact that the ~~consumer~~ debtor is not legally obligated to make such affirmation.
3. Collect or attempt to collect from the ~~consumer~~ debtor any part or all of the debt collector's fee or charge for services rendered.
4. Collect or attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by law or by the agreement creating the obligation and legally chargeable to the ~~consumer~~ debtor.
5. Communicate with a ~~consumer~~ debtor whenever it appears that the ~~consumer~~ debtor is represented by an attorney and the attorney's name and address are known unless the attorney has failed to respond to a communication within thirty days or the debt collector has been advised by the debtor or attorney that the attorney no longer represents the debtor.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-13 is amended as follows:

13-04-02-13. Receipts for collection of currency and coin. No debt collector may accept currency or coin as payment for a ~~claim~~ debt without issuing an original receipt to the debtor and maintaining a duplicate receipt as a part of the debt collector's permanent records.

History: Effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-07