

This rule was filed as 12 NMAC 24.2.

**TITLE 12      TRADE COMMERCE AND BANKING**  
**CHAPTER 24   COLLECTION AGENCIES**  
**PART 2        COLLECTION AGENCY REGULATORY ACT**

**12.24.2.1      ISSUING AGENCY:** Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.  
[6/19/87; 9/30/97; Recompiled 10/15/01]

**12.24.2.2      SCOPE:** All collection agencies licensed by the state of New Mexico.  
[6/19/87; 9/30/97; Recompiled 10/15/01]

**12.24.2.3      STATUTORY AUTHORITY:** Laws 1987, Chapter 252.  
[6/19/87; 9/30/97; Recompiled 10/15/01]

**12.24.2.4      DURATION:** Permanent.  
[6/19/87; 9/30/97; Recompiled 10/15/01]

**12.24.2.5      EFFECTIVE DATE:** June 19, 1987 unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 30, 1997.  
[6/19/87; 9/30/97; Recompiled 10/15/01]  
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

**12.24.2.6      OBJECTIVE:** The objective of this part is to define licensing requirements for collection agencies in the state of New Mexico.  
[6/19/87; 9/30/97; Recompiled 10/15/01]

**12.24.2.7      DEFINITIONS:** The term "liquid assets" as used in Section 9 of the Act is defined to mean cash or its equivalent, United States government obligations (direct or guaranteed), securities listed with a nationally recognized stock exchange and current (not more than 30 days overdue) accounts receivable from clients of the applicant.  
[6/19/87; 9/30/97; Recompiled 10/15/01]

**12.24.2.8      LICENSING REQUIREMENTS:**

A. In determining the amount of bond to be furnished by an applicant for renewal of a collection agency license, the penal sum of the bond shall be the greater of \$5,000.00 or an amount equal to the proceeds due clients for at least two months average collections during the previous licensing year; provided, however, no licensee shall be required to furnish a bond in excess of \$25,000.00 unless the financial condition of the applicant is such as to cause the director concern about sufficient protection for clients, in which case the director may require a bond in minimum amount of at least six months proceeds due clients during the previous licensing year. If the financial statement of the applicant reflects a condition where current liabilities are equal to or are in excess of current assets, the director may deny application for an original or renewal license pending applicant's taking steps to improve its financial condition.

B. The director shall not approve licenses to applicants using trade styles that indicate or infer a condition that is not true; viz., "credit bureau" when there is no bona fide credit reporting service; "national association", etc. where there is no such connection; "detective agency", etc., where there is no such actual activity or any name that may imply a municipal, county, state or federal affiliation.

C. Any employee or owner of a collection agency who uses any alias must register same with the director.

D. The director shall not approve licenses to applicants using trade names or styles in a particular area where those trade names or styles are so similar to that of another licensee or other business in the same area as to cause confusion as to identity.

E. No licensee shall use any form notice to debtors without first obtaining approval of said form by the director or his designee. Individual notices or communications to debtors need not be approved by the director, but content thereof shall comply with the spirit and intent of the act and these rules and regulations. Specifically, but not all inclusively, licensees shall not threaten, coerce, infer consequences or effects in which there is no truth in substance, simulate legal process, use innuendoes or misleading phraseology, or engage in unethical or unfair practices (including, but not limited to, those practices which are prohibited by the federal Fair Debt Collection Practices Act). Legal action or process may not be threatened unless the collection agency, or the creditor, intends to take such action and the agency can establish that such action is normally taken.

F. No licensee shall conspire with any law enforcement official relative to deferring payment of costs or paying costs on a "contingent basis" nor shall any law enforcement official be paid any fee, salary or any remuneration by a collection agency other than prescribed by law and paid through the offices of a court of competent jurisdiction.

G. Every licensee shall deal openly, fairly and honestly in the conduct of the collection agency business with both client and debtor and shall at all times conform to the canons of business ethics and practices of the American collectors association, to the applicable rules and regulations of the federal trade commission and to the provisions of the Fair Debt Collection Practices Act.

H. Clients' shares of collections shall be deposited into a trust account within two banking days, except that if such monies are less than \$100,000.00, deposits may be made weekly.

I. Whenever a person actively in charge of an office ceases to be in charge and the licensee has notified the director in writing within ten days from such cessation as required by Section 23 of the Act, the licensee shall have forty days from such cessation in which to have a proper application for a manager's license filed and the agency license shall remain in force until the director examines and acts on said manager's application. If the application for manager's license is not approved by the director, the licensee shall have an additional thirty days in which to file an additional application for a manager's license or show cause for an extension of time to submit the required application. Failure to adhere to this procedure will render the agency license void *ipso facto*. The notice to be given pursuant to Section 23 of the Act, shall specify the exact date when the person previously in active charge of the office ceased to be in charge.

J. Every collection agency licensee shall maintain a complete record of all checks outstanding against its trust account(s) which have not been presented for payment as of the date of most recent trust account bank statement(s). Such record shall be made available to the director or his representatives upon demand.

K. Every collection agency licensee shall maintain and have available at all times, for examination by the director or his representatives, a record showing at least the following information on all collections made on each day:

- (1) the amount of each collection paid to the licensee;
- (2) the amount of each collection paid directly to the client;
- (3) the amount of the client's share of the collection;
- (4) the amount of the licensee's share of the collection;
- (5) any other costs or charges retained by the licensee;
- (6) the amount deposited to the trust accounts;
- (7) the name or code number of the client for which the collection was made;
- (8) the amount remitted to the client on all collections.

(a) Numbered receipts filed consecutively shall be used for cash payments; however, totals for paragraphs 1, 2, 3, 4, 5, 6 and 8 [now Paragraphs (1), (2), (3), (4), (5), (6) and (8) of Subsection K of 12.24.2.8 NMAC] must be provided for each monthly accounting period.

(b) Said records may contain any additional information which the licensee may desire to include as an aid to its record keeping and operations.

L. Licensed collection agencies may appoint solicitors who shall be of good moral character, knowledgeable in good collection agency practices and ethics, and having a reputation for fair and honest dealings with the general public. The name and address of such person appointed as a solicitor must be submitted to the financial institutions division on a form prescribed by the director. The director, pursuant to Section 29 of the Act, shall thereupon, if the solicitor meets all the requirements of this regulation and of Section 29 *supra*, issue a solicitor's license bearing the name of the licensed collection agency by whom the solicitor is employed.

(1) All solicitor's licenses shall expire on June 30 of each year unless renewed at the same time as the licensed agency bearing the name of the same. In the event of the cancellation of an agency license, the licenses of all solicitors authorized for that agency by the director shall be concurrently canceled and the solicitors shall be

notified by regular mail. In the event that a solicitor ceases to be employed by a licensed agency, the agency shall, within ten days thereafter, notify the director, at which time the solicitor's license shall be voided and the solicitor may not thereafter be employed by any licensed collection agency until such time as the solicitor has been issued a new license as herein provided.

(2) A person shall be considered a solicitor only after being employed by a licensed collection agency for a period of 120 days to collect debts for the agency. No license shall be required until such time unless requested by the licensee.

[6/19/87; 9/30/97; Recompiled 10/15/01]

**HISTORY OF 12.24.2 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

Regulation FID 77-2, Order 77-1; Regulation 77-1A through 77-15A, 77-1S, 77-1R, filed 6/20/77; and Regulation FID 87-5, Collection Agency Regulatory Act Regulations, filed 6/19/87.

History of Repealed Material: [RESERVED]