

ACA's Guide to State Collection Laws and Practices

A comprehensive summary of the consumer laws and regulations that apply to most collection agency practices in all 50 states, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands.

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How to Use this Guide

ACA's Guide to State Collection Laws and Practices is intended to be a comprehensive guide to the laws and regulations that apply to most collection agency practices in all 50 states, U.S. territories and the District of Columbia. This manual has been designed to help you find answers quickly and efficiently. The following outline summarizes how it is organized.

The Summary Sections provide information on the following topics:

- Interstate Collections
 - States That Have Enacted Open Borders
 - Sample Arguments for Open Borders
 - Commonly Asked Questions About Closed States
- First Party Collections
- Commercial Collections
- Attorney Licensing
- Purchaser Licensing
- Garnishment
- Right of Assignment
- Adding Fees
- Employee Monitoring
- ADADs (Automated Dialing and Announcing Devices)
- Contact/Fee Information
- Additional Resources

The State Sections summarize the license, bond, collection practices and debt responsibility laws for each state, U.S. territories and the District of Columbia. This information is organized by state as follows:

- I. License or Registration
- II. Fees
- III. Bond Requirements
- IV. Resident Office Requirements
- V. Exemptions for Out-of-State Agencies or Others
- VI. Trust Accounts
- VII. Requirements for Communications
- VIII. Statutory/Regulatory Requirements for Agency Operations
- IX. Penalties for Collecting Without a License or Violations of State Law or Regulations
- X. Legal Age
- XI. Debt Responsibility
- XII. Statute of Limitations for Civil Actions

- I. License or Registration** - This section provides the requirements that must be met for a collection agency to become licensed to operate in a state. Information is provided on statutory or

How to Use This Guide

regulatory licensing or registration requirements governing:

- applications for an initial collection agency license or registration;
- renewal of a collection agency's license or registration;
- reporting requirements in the event of changes to any information an agency supplied at the time of application;
- manager licensing or registration requirements;
- solicitor and/or employee licensing or registration requirements; and
- branch office licensing or registration.

II. Fees - This section provides information showing the costs associated with a state's licensing or registration requirements.

III. Bond Requirements - As part of licensing or registration requirements, many states require that collection agencies hold a surety bond. This section provides information about such requirements, including:

- the required bond amount or range;
- whether an in-state bond is required or if an agency's bond held in another state is suitable;
- the conditions that must accompany each bond;
- whether a cash deposit or other financial arrangements may be provided in lieu of the bond; and
- how the cancellation of any bond by the surety or state administrator is to be handled.

IV. Resident Office - Some states require that collection agencies maintain a physical presence within their borders as a condition of being licensed or registered. This section discusses those requirements as they are identified in state law or regulation.

V. Exemptions - This section shows which states provide an exemption from their licensing or registration requirements for out-of-state collection agencies or others who may carry out some form of collection activity during their normal course of business.

VI. Trust Accounts - Some states require that collection agencies place the funds they collect for their creditor clients into specifically-identified trust accounts. This section indicates:

- Whether trust accounts are required for resident agencies/out-of-state agencies;
- Where trust accounts can be maintained; and
- Whether trust accounts can bear interest.

VII. Requirements for Communications - Beyond licensing requirements, many states have adopted laws or regulations that place certain requirements on collection agencies' communications with debtors. This section highlights provisions of state laws that are more restrictive than the federal Fair Debt Collection Practices Act in:

- requiring itemization of debts and other charges;
- requiring the use of a street address and/or telephone numbers;
- requiring collection agencies to use their licensed agency name only;
- requiring that duns be approved by a state authority;
- specifying special text or address requirements that must be included in communications;
- specifying that collection agencies must include consumer rights and/or warnings;
- allowing or prohibiting collectors to use an alias;
- placing additional restrictions on the content or forms of communications with debtors;
- limiting contacts at place of employment;
- limiting the hours and times collectors are allowed to make contact with consumers; and
- prescribing if a debt may be discussed with a debtor's spouse.

VIII. Statutory/Regulatory Requirements for Agency Operations - This section includes information on:

How to Use This Guide

- Requirements for Record Maintenance - Identifies state requirements that specify how long collection agencies must maintain their records, and the types of records that must be maintained;
- Business Practices/Audit Requirements - Provides information found in state law or regulation covering audits by a state regulatory authority, and other provisions which govern collection agencies' business practices;
- Whether Agencies Can Add Interest/Fees - Presents information on whether collection costs, interest and fees may be added to debts;
- State Interest Rates and Usury Limits - Shows the legal, contract, judgment and corporate interest rates allowable by state law;
- Right of Assignment - Shows if collection agencies in the state may be assigned debts and bring legal action in their own name;
- Sales Tax on Services - Identifies state laws that require collection agencies to pay sales tax on their services;
- Auto-dialers - Shows state requirements that govern the use of automated dialing systems; and
- Whether Conversations Can be Recorded - Provides information on the requirements in state law for the recording of conversations for employee monitoring purposes.

IX. Penalties for Collecting without a License or Violations of State Law/Regulations - The penalties that states may apply to collection agencies for violation of a state law or regulation are discussed. This section provides information about the penalties which may be brought against an agency, and summarizes:

- criminal penalties available;
- civil penalties available;
- any other actions the state may take against an agency, such as revocation, suspension or non-renewal of a license; and
- the process available to an agency to appeal disciplinary actions.

X. Legal Age - This section lists the state's age of majority; the age at which a minor is considered emancipated; and the age at which a minor may enter into and be held liable for contracts.

XI. Debt Responsibility - This section provides information on state statutory or case law on the "doctrine of necessities," which may hold a spouse liable for providing the "necessaries" of life (food, clothing, shelter, medical care or education for minor children).

Community property laws are also summarized. These laws treat all property or income acquired by either spouse during marriage as being equally divisible upon death or divorce, or for business transacted by either spouse.

XII. Statute of Limitations for Civil Actions - A state's statute of limitations determines whether a collection agency may bring a civil action against a debtor in an attempt to collect a debt. This section lists such statutes as they apply to contracts; open accounts; and domestic and foreign judgments.