

Chapter 697

Collection Agencies

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697.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Collection Agencies Advisory Board.

(2) "Commissioner" means the Real Estate Commissioner.

(3) "Person" includes firms, corporations and voluntary associations.

697.020 "Collection agency" defined.

(1) The term "collection agency" means and includes all persons engaging directly or indirectly and as a primary or secondary object, business or pursuit in soliciting claims for collection or in the collection of claims owed or due or asserted to be owed or due to another. Any person when engaged in collecting claims for another where the employment is for one or more persons is conducting a collection agency within the meaning of this chapter.

(2) Any house agency, firm, person, corporation or voluntary association using any name other than its own in collecting its own claims with the intention of conveying, or which tends to convey, the impression that a third party has been employed, is conducting a collection agency, within the meaning of this chapter.

(3) The term "collection agency" does not include attorneys at law who do not specialize in collections, licensed real estate brokers residing in this state when engaged in the regular practice of their respective professions, nor banks, trust companies, building and loan associations, savings and loan associations, abstract companies doing an escrow business, individuals regularly employed on a regular wage or salary in the capacity of credit men or in other similar capacity upon the staff of employees of only one person, one firm or one corporation not engaged in the business of a collection agency, express companies and telegraph companies doing business subject to public supervision and regulation, any public officer or any person acting under an order of court.

697.030 Collection agency license required to collect claims. (1) Without first having applied for and obtained a license as specified in this chapter, no person shall:

(a) Conduct within this state a collection agency.

(b) Within this state collect claims for others.

(c) Solicit the right to collect or receive payment of any claim for another.

(d) Advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment of any claim for another.

(e) Seek to make collection or obtain payment of any claim on behalf of another.

(2) Nothing contained in this section shall be construed to require the employees of a licensed collection agency in this state to procure a collection agency license.

697.040 Qualifications of applicants for license. Collection agency licenses shall be granted only to persons who are citizens of the United States, residents of Oregon for more than one year prior to the date of application, over 21 years of age and who are trustworthy and competent to transact the business of a collection agency and to corporations licensed to do business in the State of Oregon whose managers possess the same qualifications.

697.050 Educational qualifications of original applicant for license. An original applicant for a license under this chapter shall, in addition to meeting the requirements of ORS 697.040, be at least a graduate of a four-year high school or shall prove satisfactorily to the commissioner that he is possessed of the equivalent of a four-year high school education in point of intellectual competency and achievement.

697.060 Application for license. Every applicant for a collection agency license, or the renewal thereof, shall apply therefor in writing, under oath, upon blanks furnished by the commissioner, and shall state the full name and residence address of the applicant and the business name and address where he will conduct his collection agency, and in case of a partnership, the full name and residence address of each partner, and, in case of a corporation, the full name and residence address of each of its officers and directors.

697.070 Fee and other material to accompany applications. The application shall be accompanied by:

(1) The annual license fee for a collection agency license, which is fixed at \$20.

(2) Complete forms of all contracts and assignments designed for execution by persons placing any claim with the applicant for collection.

(3) A list containing the names and res-

idence addresses of all solicitors for the applicant.

(4) A bond running to the State of Oregon with a surety or sureties to the satisfaction of the commissioner, and conditioned that the licensee shall, within 30 days after the close of each calendar month, report and pay to his customers the net proceeds of all collections made during the calendar month.

697.080 Collection agency bond. The bond provided for in subsection (4) of ORS 697.070 shall be executed by the applicant, as principal, and by a corporation, which is licensed by the State Insurance Commissioner to transact the business of fidelity and surety insurance, as surety; or by two or more persons owning unencumbered real estate within the State of Oregon, the value of which in the aggregate is at least twice the amount of the penalty of the bond, as sureties, in which case the applicant must furnish to the commissioner a legal description of the property owned by each of the sureties together with a certificate from the county assessor showing the assessed value thereof. If any such surety shall, during the life of such bond, sell, mortgage or otherwise dispose of any of the property so listed, he shall immediately notify the commissioner, and thereupon the commissioner shall give notice to the licensee by registered letter, return receipt demanded, that his bond will be canceled and his license revoked unless a new bond with proper sureties is filed within 30 days thereafter. Any licensee may, at any time, file with the commissioner a new bond. Any surety may file with the commissioner notice of his withdrawal as surety on the bond of any licensee. Upon filing of such new bond, or upon the revocation of the collection agency license, or upon expiration of 30 days after the filing of notice of withdrawal, as surety, by the surety, the liability of the former surety for all future acts of the licensee shall terminate. The commissioner shall forthwith cancel the bond given by any surety company upon being advised its license to transact the business of fidelity and surety insurance has been revoked by the State Insurance Commissioner. Upon the filing with the commissioner of notice by a surety of his withdrawal as the surety on the bond of any licensee, or upon the cancellation by the commissioner of the bond of any surety company as provided in this section, the commissioner shall forthwith give notice to the licensee of such with-

drawal or cancellation, which notice shall be by registered mail with request for a return receipt and addressed to the licensee at his main office, as shown by the records of the commissioner. At the expiration of 30 days from the date of mailing the notice, the license of such licensee shall be forthwith terminated, unless the licensee has filed a new bond with a surety, or sureties, satisfactory to the commissioner. All bonds given under the provisions of this chapter shall be filed and held in the office of the commissioner.

697.090 Amount of bond. The bond of each licensee shall be for \$3,000. However, when an applicant or licensee operates more than one office, under one ownership, one bond shall cover all such offices and the amount of the bond shall be equal to the sum of \$3,000 for the first office and \$1,000 for each additional office, in which case the commissioner shall determine the facts and set the amount of the bond required.

697.100 Form of bond. The bond required by ORS 697.070 shall be in the form substantially as follows:

Know All Men by These Presents that we, —, as principal, and —, as suret—, are held and firmly bound unto the State of Oregon, in the penal sum of —, (\$—), lawful money of the United States, for the payment of which well and truly to be made we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas, the above bounden principal has applied to the Real Estate Commissioner of the State of Oregon for a collection agency license under the provisions of ORS chapter 697, and is required by the provisions of that law to furnish a bond conditioned as herein set forth.

Now, therefore, if the said — shall, within 30 days after the close of each calendar month, report and pay to his customers the net proceeds of all collections made during said calendar month, and shall strictly, honestly and faithfully comply with the provisions of ORS chapter 697, and all amendments thereof and supplemental thereto, now or hereafter enacted, then this obligation shall be void, otherwise to remain in full force and effect.

This bond shall become effective on the — day of —, 19—. The suret— may be relieved of future liability hereunder by giv-

ing 30 days' written notice to the principal and to the Real Estate Commissioner of the State of Oregon.

This bond shall be one continuing obligation and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty hereof.

In Witness Whereof we have hereunto set our hands and seals at — in the State of Oregon, this — day of —, 19—.

_____(SEAL)

Principal

_____(SEAL)

_____(SEAL)

Suret—

697.110 Examination of new applicants. Each applicant not previously licensed under this chapter but making an original application for a license under this chapter shall, before being licensed, in addition to complying with the other provisions of this chapter, comply with the provisions of this section. Each such original applicant shall pay, in addition to all other fees payable by licensees under this chapter, an examination fee of \$20. The commissioner shall examine all such original applicants for licenses and issue licenses to those found qualified to be licensed as provided in this chapter. The examinations of such original applicants may be oral or written, or partly oral and partly written, and shall be practical in nature and sufficiently thorough to ascertain their fitness. Questions on bookkeeping, credit adjusting, business ethics, agency, contracts, debtor and creditor relationship, trust funds and the provisions of this chapter may be included in the examination.

697.120 Fee for license; return of fee and bond if license not issued. The fee for all licenses issued shall, at all periods of the year, be the same as prescribed in this chapter. No other license or fee shall be required of such licensee by any city, county, town or other political subdivision thereof. If the commissioner does not issue the license applied for, the fee and bond shall be returned to the applicant.

697.130 Issuance of licenses. The commissioner shall, upon receipt of the proper application, bond and fee, issue to each applicant entitled thereto as a previous licensee under this chapter a renewal license and certificate thereof, and to each original applicant found qualified therefor upon examina-

tion under this chapter an original license and certificate thereof, in such form and size as shall be prescribed by the commissioner. Each such license certificate shall show the name and residence address of the applicant and the business name and address of the licensee, the date of expiration of the license and such other matter as may be prescribed by the commissioner. While the license is in force it shall at all times be displayed in a conspicuous place in the outer office of the collection agency. Each collection agency must procure a license and pay a license fee of \$20 for each of its offices in the State of Oregon.

697.140 Denial of licenses. (1) A collection agency license or renewal thereof shall be denied in every case in which the applicant, if an individual, or any member of the firm, if the applicant is a partnership or any of its officers or directors, if the applicant is a corporation or association, has ever been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other like offense, or has been disbarred from the practice of law.

(2) The occurrence of any of the grounds listed in subsection (1) of this section while a collection agency license is in effect, shall constitute additional grounds for the suspension or revocation of the license by the commissioner.

697.150 Issuance of solicitor's certificate and pocket card. The commissioner is authorized to issue one solicitor's certificate and pocket card free to each licensee authorized to do a collection agency business in Oregon and to issue a solicitor's card to any employe of a licensed collection agency upon written application therefor, on forms supplied by the commissioner, and upon the payment of \$1. The application shall be signed by the applicant and his employer. The solicitor's card shall contain the name of the solicitor, the name and address of the collection agency for whom he is employed and such other matter as shall be prescribed by the commissioner. All such solicitor's pocket cards shall expire on June 30 after issue or upon the revocation or suspension of his employer's license. The person to whom such solicitor's certificate has been issued shall display it upon the request of any person, and upon the termination of his employment, shall surrender such certificate

to his employer for cancelation by the commissioner.

697.160 Solicitation of claims without certificate prohibited. No person shall solicit or attempt to solicit claims for collection by himself or by any other person without a solicitor's certificate, or fail to display the certificate upon request, or fail to surrender his solicitor's certificate to his employer or the commissioner within five days after the termination of his employment.

697.170 Assignability of licenses; procedure on change of name or removal of business. Licenses granted under this chapter are not assignable. Upon change of assumed business name or removal from the location stated in any license issued under this chapter, the licensee shall, within five days thereafter deposit his license and full information regarding the change with the commissioner, who shall note on the face of the license the change so made and make an appropriate entry in his records and return the license to the licensee.

697.180 Expiration date of licenses. All licenses issued under this chapter expire on June 30 following the issuance thereof.

697.190 Annual statement of collections. Each licensee shall, not later than January 31 of each calendar year, file with the commissioner a duly verified annual statement for the preceding calendar year, showing the respective amounts of all customers' money collected by the licensee during the preceding calendar year, which will not previously be remitted to the customers entitled thereto or properly accounted for, and showing also the amounts of money which the licensee has on deposit in any bank or in the licensee's possession for the purpose of liquidating any and all amounts due to customers. Such annual statement shall be made substantially in the following form:

ANNUAL STATEMENT TO REAL ESTATE COMMISSIONER

Pursuant to ORS chapter 697, the undersigned, _____, duly licensed under that chapter to conduct the business of a collection agency, hereby does declare that the amount of money collected during the preceding calendar year by the undersigned, as a licensee under that chapter, which has not been remitted to any customer or properly accounted for is \$_____.

The attached schedule contains a true

statement of the name and address of each customer of the undersigned to whom there was due or owing at the end of the preceding calendar year on account of collections made during the preceding calendar year the aggregate sum of \$5 or more.

IN WITNESS WHEREOF, the undersigned has executed this statement on this _____ day of _____, 19____.

(name of licensee) _____

(signature) _____

(capacity) _____

VERIFICATION

STATE OF OREGON } ss.
County of _____ }

I, the undersigned, being first duly sworn, do on oath depose and say: That I executed the within annual statement as the licensee therein named or on behalf of the licensee therein named as the managing partner, director or corporate manager of the licensee therein named, as indicated therein; that I have read the statement and know the contents thereof; and that the statement is true.

Subscribed and sworn to before me this _____ day of _____, 19____.

Notary Public for Oregon

My commission expires: _____

697.200 False declarations prohibited. The wilful making of any false declaration in the annual statement shall constitute a violation of this section and shall constitute sufficient grounds for revocation of the license of the licensee after hearing and determination as provided in this chapter.

697.210 Failure to file annual statement. If the annual statement is not filed as required, the failure to file it shall constitute grounds for the immediate suspension of the license of the licensee so failing to file the statement and the commissioner shall notify the licensee by registered mail that the license of the licensee will be suspended upon the expiration of the period of 10 days thereafter unless the licensee complies with the provisions of ORS 697.190. However, for good cause shown and upon satisfactory proof furnished by the licensee that the failure to file the statement was due to a condition not within the control, or was due to excusable neglect, of the licensee, the commissioner may permit the filing of the statement after the time limited and excuse the failure to file the statement within the time

limited. If the statement required by ORS 697.190 is not filed with the commissioner as required in this section or ORS 697.190 the commissioner shall revoke the license of such licensee.

697.220 Statements are confidential.

Any statement of any applicant or licensee required by the terms of this chapter to be filed with the commissioner shall be confidential and shall not become a public record, but it may be introduced in evidence in any suit, action or proceeding in any court or in any proceeding involving the granting or revocation of the license of any licensee.

697.230 Investigation of complaints. The commissioner may, upon his own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any person or persons, claimed to have violated the provisions of this chapter, and for that purpose the commissioner shall have free access to the offices and places of business, books, accounts, records, papers, files, safes and vaults of all such persons, but no complaint shall be held to be sufficient basis for the denial, revocation or suspension of a license unless it specifies in detail the charges made against the licensee.

697.240 Manner in which records and funds to be kept by licensees. (1) Every licensee shall make a permanent record of all sums collected by him, and of all disbursements made by him, and shall maintain and keep all such records and all customers' funds in the State of Oregon. No person shall intentionally make any false entry in any such collection agency record, or intentionally mutilate, destroy or otherwise dispose of any such record.

(2) A licensee shall not commingle the money of his customers with his own money, but shall maintain a separate trust account for his customers' funds.

697.250 Reports and payments by agency and customer. Every collection agency shall, within 30 days after the close of each calendar month, report and pay to his customers the net proceeds of all collections made during that calendar month. Every customer of a collection agency shall, within 30 days after the close of each calendar month, report and pay to his collection agency all sums owing to it for payments received by the customer during that calendar month on collection items in the hands of the collection agency.

697.260 Grounds for suspension or revocation of licenses. (1) Failure to comply with any provision of this chapter or any lawful order of the commissioner, is sufficient cause for suspension or revocation of any license issued pursuant to this chapter.

(2) In addition to the criminal penalty provided for violation of ORS 165.265, any license issued to a defendant under the provisions of this chapter may be revoked by order of a court of competent jurisdiction for violation of ORS 165.265.

697.270 Denial, suspension or revocation of license; procedure; appeal. The commissioner shall, before denying any application for license, and before suspending or revoking any license, set the matter down for hearing, and at least 10 days prior to the date set for the hearing, he shall furnish the applicant or licensee a true copy of the charges against him and a notice in writing of the time and place of the hearing, and shall afford the applicant or licensee an opportunity to be heard, in person or by counsel, in reference thereto. Such copy of the charges and written notice may be served by delivery personally to the applicant or the licensee or by mailing it by registered mail to the last known business address of the applicant or licensee. The hearing on the charges shall be held at such time and place as the commissioner shall prescribe. The commissioner shall have the power to issue subpoenas and bring before him any person, book, or writing in this state, to swear witnesses and to take the testimony of any person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in courts of record of this state in civil cases. All evidence shall be given under oath. Any party to any hearing shall have the right of subpoena to compel the attendance of witnesses and produce all books and writings on his behalf. If the commissioner determines that any applicant is not qualified to receive a license, a license shall not be granted to the applicant, and if the commissioner determines that any licensee is guilty of a violation of any of the provisions of this chapter, his license may be suspended or revoked. Such order shall not be operative for a period of 10 days from the date thereof, and any person aggrieved thereby may appeal within 10 days from the date of the order, to the circuit court of the county in which the collection agency has its principal place

of business, by giving notice of appeal to the commissioner and filing such notice with proof of service thereon and a bond with a surety to the satisfaction of the judge of the court, conditioned to pay all costs that may be awarded against the appellant on appeal, in the office of the clerk of the circuit court. The filing of the notice and bond shall supersede the order of the commissioner until the final determination of the appeal. Within 15 days from the date of filing the notice and bond, or within such further time as may be granted by the court, the commissioner shall file in the circuit court a transcript of the whole record of his office relative to all matters involved in the appeal. The circuit court shall, sitting as a court of equity, try the matter anew and enter such decree as justice requires.

697.280 Action on collection agency bond. If a collection agency has failed to account for and pay over the proceeds of any collection made, the client shall have, in addition to all other legal remedies, a right of action in his own name on the bond given pursuant to the provisions of this chapter for the loss suffered by him, not exceeding the face of the bond, and without the necessity of joining the collection agency in such suit or action. No action shall be brought upon any bond given pursuant to the provisions of this chapter after the expiration of two years from the revocation or expiration of the license issued thereon, and the total of all recoveries from the sureties shall not exceed the face of the bond. Upon entering judgment for plaintiff in any action, on the bond required by this chapter, for more than the sum tendered in court by the defendant, if any, the court shall include in the judgment reasonable compensation for the service of plaintiff's attorney in the action.

697.290 License and bond prerequisite to action or suit. No person required by this chapter to procure a license or post a bond is entitled to maintain any suit or action in any of the courts of this state without alleging and proving that he is duly licensed and has procured a bond, as provided in this chapter.

697.300 to 697.390 [Reserved for expansion]

697.400 Collection Agencies Advisory Board; appointment, qualifications and term of members. (1) A Collection Agencies Ad-

visory Board hereby is created. The board shall consist of five members, four of whom shall be licensees under this chapter and one of whom shall be the Real Estate Commissioner. The commissioner shall be chairman of the board. Each member of the board, except the commissioner, must have been, for five years before the date of his appointment, a licensed operator of a collection agency, as an owner, partner, or an officer or manager of a corporation, actively engaged in business as such in this state. Not more than two members of the board, exclusive of the Real Estate Commissioner, shall be appointed from any one congressional district. No member of the board, other than the commissioner, shall receive compensation for serving on the board.

(2) Annually, the Governor shall appoint to the board two qualified members for the term of two years. The Governor shall fill by appointment any vacancy in the board membership however caused, the appointee to serve during the unexpired term of his predecessor on the board.

697.410 Meetings of board; quorum; effect of vacancy. The board shall hold meetings for the transaction of business at least once in each period of six months in such place in Oregon as it may designate. The board may meet more frequently upon the giving of previous written notice, as provided by ORS 182.020, to the members of the board of the time and place of meeting, except that such notice shall be given and signed by the commissioner, as chairman of the board, or by a majority of the members of the board. A majority of the members of the board shall constitute a quorum for the transaction of any business or for the exercise of any power or for the performance of any duty of the board. A vacancy in the board membership shall not impair the right of the remaining members of the board to exercise any power or to perform any duty of the board.

697.420 Authority of board. The board may inquire into the respective requirements of the public in relation to collection agencies and of the licensees under this chapter and generally may exercise its powers and perform its duties under this chapter in such manner as will be conducive to the welfare of the public and of the licensees under this chapter.

697.430 Powers and duties of commissioner. The Real Estate Commissioner shall enforce the provisions of this chapter, and he shall have full power to issue licenses, and to deny, suspend or revoke licenses for any violation of this chapter, and to perform all other acts and duties provided for in this chapter and necessary to its enforcement. He shall employ such clerks and assistants as he may need to discharge the duties imposed upon him by this chapter and fix their compensation, which shall be paid as other state salaries are paid.

697.440 Records of commissioner as evidence. Copies of all records and papers in the office of the commissioner, certified to be a true copy under the hand and seal of the commissioner, shall be received in evidence in all cases equally and with like effect as the originals.

697.450 Publication of directory. On or about September 1 in each year, the commissioner shall publish a directory containing a list of all the licensed collection agencies in Oregon and a copy of this chapter and such other material as the commissioner shall prescribe, and without charge therefor mail one copy to each licensed collection agency, and one to each person in the state upon request.

697.460 Disposition of receipts. (1) All fees, fines and penalties provided for in this chapter shall be paid to the commissioner, and by him paid to the State Treasurer at the end of every calendar month and shall be placed in the General Fund. All such funds so received and paid to the State Treasurer, or so much thereof as may be necessary, shall be available and constitute an appropriation from the General Fund for the payment of the expenses and salaries incurred under the provisions of this chapter, includ-

ing the payment of such part of the salary of the commissioner as may be fixed by law to be paid from funds received under this chapter.

(2) All money remaining in the General Fund of the State Treasury to the credit of the Collection Agency Account on June 30 of each year, except \$3,000, and except all money which has been collected for licenses issued, or to be issued, for the succeeding year, shall be transferred from the Collection Agency Account to the General Fund to become available for general governmental purposes.

697.470 Remedies not exclusive. The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

697.480 Jurisdiction of courts. Justice courts and district courts have concurrent jurisdiction with circuit courts in all criminal prosecutions for violation of this chapter.

697.990 Penalties. (1) Violation of any of the provisions of this chapter by an individual is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment for a term not to exceed six months, or by both.

(2) Violation of this chapter by a corporation is punishable, upon conviction, by a fine of not more than \$1,000. Any officer or agent of a corporation or association who personally participates in any violation of this chapter by such corporation or association is subject to the penalties prescribed in subsection (1) of this section.

(3) Violation of ORS 697.160 is punishable, upon conviction, by a fine of not more than \$100, or by imprisonment not to exceed 30 days, or by both.

