

The following adoption notice and text of collection agency rule was published in the *City Record* on March 25, 2010. The rule becomes effective April 24, 2010.

NOTICE OF ADOPTION

Notice of Adoption of Rule Regarding Debt Collection Agencies.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Section 20-104 (b) of Chapter 1, and Sections 20-493 (a) and 20-493.2 (b) of Chapter 2, Title 20 of the Administrative Code of the City of New York, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department promulgates and adopts a new rule regarding requirements governing debt collection agency licensees.

These amendments were proposed and published on May 26, 2009. The required public hearing was held on June 26, 2009.

All material shown below is underlined as the entire text of the rule is new.

RULE

Section 1. Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new subchapter S to read as follows:

SUBCHAPTER S

DEBT COLLECTION AGENCIES

§ 2-190 Documentation of the debt to be provided by debt collection agency. (a) The written documentation identifying the creditor who originated the debt, which a debt collection agency is required to provide pursuant to § 20-493.2 (a) of the Administrative Code, shall be a copy of the debt document issued by the originating creditor or an original written confirmation evidencing the transaction resulting in the indebtedness to the originating creditor. Computer documents or electronic evidence created or generated after default on the indebtedness shall not qualify as such confirmation.

(b) The written documentation itemizing the principal balance of the debt that remains or is claimed or alleged to remain due and all other charges that are due or claimed or alleged to be due, which a debt collection agency is required to furnish pursuant to § 20-493.2 (a) of the Administrative Code, shall consist of a copy of the final statement of account issued by the originating creditor and a document itemizing: (1) the total amount remaining due on the total principal balance of the indebtedness to the originating creditor and (2) each additional charge or fee claimed or alleged to be due that separately (i) lists the total for each charge or fee and the date that each charge or fee was incurred; and (ii) identifies and describes the basis of the consumer's obligation to pay it.

§ 2-191 Disclosure of consumer's legal rights regarding effect of statute of limitations on

debt payment. (a) The information about the consumer's legal rights, which a debt collection agency is required to provide the consumer pursuant to § 20-493.2 (b) of the Administrative Code, shall be included in every permitted communication for each debt that the debt collection agency is seeking to collect that is beyond the applicable statute of limitations, and shall be: "WE ARE REQUIRED BY LAW TO GIVE YOU THE FOLLOWING INFORMATION ABOUT THIS DEBT. The legal time limit (statute of limitations) for suing you to collect this debt has expired. However, if somebody sues you anyway to try to make you pay this debt, court rules REQUIRE YOU to tell the court that the statute of limitations has expired to prevent the creditor from obtaining a judgment. Even though the statute of limitations has expired, you may CHOOSE to make payments. However, BE AWARE: if you make a payment, the creditor's right to sue you to make you pay the entire debt may START AGAIN."

(b) When delivered in writing, the required statement provided in subdivision a of this section shall be included, for each debt that is beyond the applicable statute of limitations, in at least 12 point type that is set off in a sharply contrasting color from all other type on the permitted communication, and shall be placed adjacent to the identifying information about the amount claimed to be due or owed on such debt.

§ 2-192 Written confirmation of debt payment schedule or settlement agreement with consumer. (a) The written confirmation of the debt payment schedule or settlement agreement with a consumer that a debt collection agency is required to furnish pursuant to § 20-493.1 (b) shall identify the originating creditor of the debt, the debt collection agency, the employee of such agency who concluded the debt payment schedule or agreement or the employee's direct supervisor, the name and address of the consumer, the date on which the debt payment schedule or agreement was made, the specific amount and due date of each payment, the address where the payments are to be mailed or where payment may otherwise be transmitted, any other terms of the debt payment schedule or agreement, and the conditions for satisfying the outstanding balance.

(b) Whenever a debt collection agency agrees to a debt payment schedule or a settlement agreement for debts originated by more than one creditor, such agency shall clearly and separately identify on such written confirmation the debt due to each originating creditor, the amount to be paid on each such debt, and how the payment the consumer makes shall be applied to each debt covered by the payment schedule or settlement agreement.

(c) Such written confirmation shall not include any terms or conditions that were not specifically agreed to by the consumer.

(d) Upon a consumer's payment of a debt as stated in the debt payment schedule or settlement agreement, the debt collection agency shall, within 21 calendar days after receipt of the final payment, send to the consumer a written confirmation of the satisfaction of the indebtedness that identifies the originating creditor and the original account number of the indebtedness.

§ 2-193 Records to be maintained by debt collection agency. (a) Unless otherwise prohibited by federal, state or local law, a debt collection agency shall maintain a separate file for each debt that the debt collection agency attempts to collect from each consumer, in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditor who originated the debt the agency is seeking to collect. The debt collection agency shall maintain in each file the following records to document its collection activities with respect

to each consumer:

(1) A copy of all communications with the consumer.

(2) A record of each payment received from the consumer that states the date of receipt, the method of payment and the debt to which the payment was applied.

(3) A copy of the debt payment schedule and/or settlement agreement reached with the consumer to pay the debt.

(4) With regard to any debt that the debt collection agency has purchased, a record of the name and address of the entity from which the debt collection agency purchased the debt, the date of the purchase and the amount of the debt at the time of such purchase.

(b) A debt collection agency shall maintain the following records to document its collection activities with respect to all consumers from whom it seeks to collect a debt:

(1) A monthly log of all calls made to consumers, listing the date, time and duration of each call, the number called and the name of the person reached during the call.

(2) Recordings of complete conversations with all consumers or with a randomly selected sample of at least 5% of all calls made or received by the debt collection agency and a copy of contemporaneous notes of all conversations with consumers. The method used for randomly selecting the recorded calls shall be included in the file where the tape recordings are maintained.

(3) A record of all cases filed in court to collect a debt. Such record shall include, for each case filed, the name of the consumer, the identity of the originating creditor, the amount claimed to be due, the civil court index number and the court and county where the case is filed, the date the case was filed, the name of the process server who served process on the consumer, the date, location and method of service of process, the affidavit of service that was filed and the disposition for each case filed. Such record shall be filed in a manner that is searchable or retrievable by the name, address and zip code of the consumer and the creditors who originated the debts that the debt collection agency is seeking to collect.

(4) The original copy of each contract with a process server for the service of process, and copies of all documents involving traverse hearings relating to cases filed by or on behalf of the debt collection agency. Such records should be filed in a manner that is searchable by the name of the process server.

(c) A debt collection agency shall maintain the following records relating to its operations and practices:

(1) A copy of all actions, proceedings or investigations by government agencies that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea or a conviction.

(2) A copy of all policies, training manuals and guides for employees or agents that direct, describe, suggest or promote how a collector is to interact with consumers in the course of seeking to collect a debt.

(d) The records required to be maintained pursuant to this section shall be retained for six years from the date the record was created by the debt collection agency, a document was obtained or received by the debt collection agency, a document was filed in a court action by the debt collection agency, or a training manual or employee guide was superseded, except that recordings of conversations with consumers shall be retained for one year after the date of the last conversation recorded on each completed recording tape.

§2-194 Call-back number answered by natural person. (a) The call-back number to be answered by a natural person, which a debt collection agency is required to provide consumers pursuant to §20-493.1 (a) (i) of the Administrative Code, shall be a number for a telephone for which a call to that number shall be either (1) answered by a natural person qualified to address consumer inquiries concerning communications the debt collection agency has with consumers or (2) routed to such a natural person within 60 seconds after the call is linked to the debt collection agency's telephone line for such number and that shall be answered by such natural person within 60 seconds after the call is routed.

(b) The required call-back number shall be answered by a natural person as specified in subdivision (a) of this section during all times when a debt collection agency conducts business with consumers.

Statement of Basis and Purpose. Local Law No. 15 for the Year 2009 amended the Administrative Code of the City of New York to establish requirements for debt collection agencies. This rule sets out the required practices for debt collection agencies pursuant to that local law and specifies the records debt collection agencies are to maintain in order for the Department to enforce compliance with the applicable laws and rules. The Commissioner is authorized to promulgate these rules by section 20-104 (b) of the Administrative Code. Additionally, section 20-493.2 (b) of the Administrative Code, as added by Local Law No. 15, specifically authorizes the Commissioner to prescribe by rule the requirements of that subdivision.

Section 20-493.2 (b) prohibits debt collection agencies from contacting consumers about debts on which the statute of limitation has expired without first providing them with information about their legal rights in these circumstances. The clear purpose of this provision is to ensure that consumers understand that debt collection agencies cannot sue or threaten to sue a consumer for time-barred debts. The Department learned at the public hearings on collection practices that it held on June 13, 2008 that debt collection agencies were using various subterfuges to solicit payments that would toll the statute of limitations. Many consumers also do not know that making any payments on a time-barred debt tolls the statute of limitations. Nor do consumers know the steps they should take to effectuate their rights when they are sued on debts that are beyond the statute of limitations.

The Department is, therefore requiring the statement about the statute of limitations that is specified in section 2-192 of title 6 of the Rules of the City of New York to implement the requirement specified in section 20-493.2 (b) of the Administrative Code. The disclosure clearly informs consumers about how the statute of limitations prevents creditors from obtaining judgments, alerts them to steps that they must take to effectuate their rights, and advises them about the consequences of making payment on such debts should they choose to do so. The Department is also requiring that the disclosures be included in each written communication

about such debt in a manner that is sufficiently clear and conspicuous to attract consumers' attention.

Local Law No. 15 also enacted section 20-493.1, which requires debt collection agencies to furnish specific information in any permitted communication with consumers and to confirm in writing any debt repayment schedule or settlement agreement reached with the consumer. The local law also added section 20-493.2 (a), which prohibits a debt collection agency from attempting to collect a debt or to contact a consumer regarding a debt after the consumer requests verification of the debt until the agency furnishes the consumer with written documentation identifying the creditor and with an itemization of the outstanding balance claimed to be due.

To clarify and identify what steps debt collection agencies are required to take to comply with these requirements and to prevent consumers from being misled by communications that fail to make required disclosures in a clear and meaningful manner, the Department promulgates section 2-190 of title 6 of the Rules of the City of New York to clearly identify and describe the documentation to be furnished to comply with the requirements of section 20-493.2 (a); and section 2-192 of such title to specify the content of the payment schedule and settlement agreement that debt collection agencies are to include in the written confirmation they are required to furnish pursuant to section 20-493.1 (b).

The Department promulgates section 2-193 of such title to require that debt collection agencies maintain designated records of their collection activities that are necessary to substantiate that agencies properly and fully comply with the requirements governing their collection practices. Section 2-193 requires that debt collection agencies make the appropriate disclosures and provide the required documentation to consumers to enable the Department to enforce compliance with the applicable laws and rules. Debt collection agencies must maintain records for a period that will provide the Department with sufficient time to investigate the history of the debt and that will ensure the availability of such records to substantiate the status of the debt during the time when legal action can still be taken to collect it.

Finally, the Department promulgates section 2-194 to address how the obligation to provide a call-back number that is to be answered by a natural person must be by someone qualified to address all matters that were the subject of the communication to the consumer, and how that requirement can be satisfied when using call routing technology.

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2009**

No. 15

Introduced by Council Members Garodnick, Comrie, Mendez, Mark-Viverito, Barron, Brewer, Fidler, Gennaro, Gentile, Gerson, Gonzalez, Jackson, James, Koppell, Liu, Martinez, Nelson, Palma, White Jr., Seabrook, Avella, Recchia Jr., Vann, Sears, Baez, Eugene, Sanders Jr. and Weprin

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to buyers of consumer debt.

Be it enacted by the Council as follows:

Section 1. The opening paragraph of section 20-489 of the administrative code of the city of New York is amended to read as follows:

a. "Debt collection agency" shall mean a person engaged in business the principal purpose of which is to regularly collect or attempt to collect debts owed or due or asserted to be owed or due to another *and shall also include a buyer of delinquent debt who seeks to collect such debt either directly or through the services of another by, including but not limited to, initiating or using legal processes or other means to collect or attempt to collect such debt.* The term does not include:

§2. Paragraph 5 of subdivision a of section 20-489 of the administrative code of the city of New York is amended to read as follows:

(5) any attorney-at-law *or law firm* collecting a debt [as an attorney] *in such capacity* on behalf of and in the name of a client *solely through activities that may only be performed by a licensed attorney, but not any attorney-at-law or law firm or part thereof who regularly engages in activities traditionally performed by debt collectors, including, but not limited to, contacting a debtor through the mail or via telephone with the purpose of collecting a debt or other activities as determined by rule of the commissioner;*

§ 3. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-493.1 to read as follows:

20-493.1 Required collection practices. In addition to any practices required under any federal, state or local law, a debt collection agency shall:

a. In any permitted communication with the consumer, provide:

i. a call-back number to a phone that is answered by a natural person,

ii. the name of the agency,

iii. the originating creditor of the debt,

iv. the name of the person to call back, and

v. the amount of the debt at the time of the communication.

b. Confirm in writing to the consumer, within five business days, any debt payment schedule or settlement agreement reached regarding the debt.

§4. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-493.2 to read as follows:

20-493.2 Prohibited collection practices. In addition to any practices prohibited under any federal, state or local law, a debt collection agency shall not:

a. Attempt to collect or contact a consumer regarding a debt after such consumer requests verification for such debt until such agency furnishes such consumer written documentation identifying the creditor who originated the debt and itemizing the principal balance of the debt that remains or is alleged to remain due and all other charges that are due or alleged to be due;

b. Contact a consumer about or seek to collect a debt on which the statute of limitations for initiating legal action has expired unless such agency first provides the consumer such information about the consumer's legal rights as the commissioner prescribes by rule.

§5. Subdivision a of section 20-494 of the administrative code of the city of New York, as amended by local law 70 for the year 2003, is amended to read as follows:

a. Any person who, after notice and hearing shall be found guilty of violating any provision of this subchapter, shall be punished in accordance with the provisions of chapter one of this title and shall be subject to a penalty of not less than seven hundred dollars nor more than one thousand dollars for each

violation provided further, however, that any such person found guilty of having acted as a debt collection agency in violation of section 20-490 of this subchapter shall be subject to an additional penalty of one hundred dollars for each instance in which contact is made with a consumer in violation of such section.

§6. This local law shall take effect one hundred twenty days after it is enacted into law.

The City of New York, Office of the City Clerk, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on March 11, 2009 and approved by the Mayor on March 18, 2009.

Michael McSweeney, City Clerk
Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW § 27

Pursuant to the provisions of Municipal Home Rule Law § 27, I hereby certify that the enclosed Local Law (Local Law 015 of 2009, Council Int. No. 660-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on March 11, 2009:

46 For, 0 Against, 0 Not Voting

Was signed by the Mayor on March 18, 2009
Was returned to the City Clerk on March 18, 2009.

Jeffrey D. Friedlander, Acting Corporation Counsel.

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of the New York City Licensing Law (and Rules, if enacted) are included as a handout in this packet. The Law (and Rules) are current as of January 2009.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 2: LICENSES
SUBCHAPTER 30: DEBT COLLECTION AGENCIES

§ 20-488 Legislative declaration. The council hereby finds the presence of consumer related problems with respect to the practices of debt collection agencies whose sole concern is the collection of debts owed to their clients. While the majority of those engaged in this business are honest and ethical in their dealings, there is a minority of unscrupulous collection agencies in operation that practice abusive tactics such as threatening delinquent debtors, or calling such people at outrageous times of the night. These actions constitute tactics which would shock the conscience of ordinary people. Due to the sensitive nature of the information used in the course of such agency's everyday business, and the vulnerable position consumers find themselves in when dealing with these agencies, it is incumbent upon this council to protect the interests, reputations and fiscal well-being of the citizens of this city against those agencies who would abuse their privilege of operation. It is herein declared that the city should license debt collection agencies.

§ 20-489 Definitions. a. "Debt collection agency" shall mean a person engaged in business the principal purpose of which is to regularly collect or attempt to collect debts owed or due or asserted to be owed or due to another. 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 officer or employee of a debt collection agency;
- (3) any person while acting as a debt collection agency for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collection agency does so 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;

(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 attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client;

(6) any person employed by a utility regulated under the provisions of the public service law, acting for such utility;

(7) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow agreement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person as a secured party in a commercial credit transaction involving the creditor;

(8) any officer or employee of the United States, any state thereof or any political subdivision of any state to the extent that collecting or attempting to collect any debt owed is in the performance of his or her official duties;

(9) any non-profit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists customers in the liquidation of their debts by receiving payments from such customers and distributing such amounts to creditors.

b. The term "child support" means a sum to be paid by either or both parents pursuant to court order or decree or pursuant to a valid agreement between the parties for care, maintenance and education of a child.

c. The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

d. The term "debt" means any obligation or alleged obligation of a consumer 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, or any obligation or alleged obligation arising out of a judgment or valid agreement for the payment of child support.

§ 20-490 License required. It shall be unlawful for any person to act as a debt collection agency without first having obtained a license in accordance with the provisions of this subchapter, and without first being in compliance with all other applicable law, rules and regulations.

§ 20-491 License term; fees. a. All licenses issued pursuant to this

subchapter shall be valid for two years unless sooner suspended or revoked. The commissioner shall establish by regulation the expiration date of such licenses.

b. The annual fee for a license or renewal thereof shall be seventy-five dollars.

§ 20-492 Applications. a. Each person applying for a debt collection agency license or renewal thereof shall file an application in such form and detail as the commissioner may prescribe and shall pay the fee required by this subchapter.

b. In addition to any other information required, the commissioner shall require the following information:

1. The name and address of the applicant.

2. The applicant who is a non-resident of the city shall provide the name and address of a registered agent within the city or designate the commissioner as his or her agent upon whom process or other notification may be served.

c. Any debt collection agency subject to the provisions of section 20-494.1 shall furnish to the commissioner a current version of the disclosure form required under section 20-494.1 (e) together with a copy of such agency's standard contract for child support payment debt collection services upon applying for a debt collection agency license or renewal thereof. Any contract for child support payment debt collection services shall not be deemed valid or in force and effect until the department has completed a review of and approved a debt collection agency's standard contract, which review shall be completed and approval or disapproval provided within ninety days after submission of such contract to the department. Any amendment or modification of such standard contract or disclosure form shall be provided to the commissioner within sixty days following such amendment or modification.

§ 20-493 Powers and duties of the commissioner. a. The commissioner may make and promulgate such rules and regulations as may be necessary for the proper implementation and enforcement of subchapter.

b. In addition to any other powers of the commissioner, not in limitation thereof, the commissioner shall have the power to enforce the provisions of this subchapter, to investigate any violation thereof, and to investigate the business, business practices and business methods of any debt collection agency, if in the opinion of the commissioner, such investigation is warranted. Each debt collection agency shall be obliged upon the request of the commissioner to supply such information as may be required concerning its business practices or methods or its proposed business practices or methods.

c. For the purpose of enforcing the provisions of this subchapter, and

in conducting investigations relating to any violation thereof, and for the purpose of investigating the business or business practices or methods of any debt collection agency, the commissioner, or the commissioner's designee, shall have the power to compel the attendance of witnesses and the production of books and records, in accordance with the provisions of chapter one of this title.

d. For the purpose of this subchapter, licensees may be held responsible for statements, representations, promises or acts of their employees or their agents within the scope of their authority; provided, however, that licensees shall not be held responsible for the statements, representations, promises or acts which are contrary to instructions or which constitute gross negligence or intentional torts unless specifically authorized by the licensee.

§ 20-494 Penalties. a. Any person who, after notice and hearing shall be found guilty of violating any provision of this subchapter, shall be punished in accordance with the provisions of chapter one of this title and shall be subject to a penalty of not less than seven hundred dollars nor more than one thousand dollars for each violation.

b. In addition to any other penalties, if a person is found to have committed repeated, multiple or persistent violations of any provision of this subchapter, such person may be responsible for the cost of the department's investigation.

§ 20-494.1 Prohibited and required practices relating to the collection of child support payments. a. For purposes of this section the following terms shall have the following meanings:

1. "Current payment of child support" shall mean a payment made pursuant to a schedule arising out of a judgment or valid agreement for the payment of child support which is made within thirty days of such payment's due date.

2. "Potential client" shall mean a person seeking child support debt collection services from a debt collection agency.

b. Any agreement or contract for the collection of child support payments shall be in writing and shall not extend beyond twelve consecutive months. Renewal of such contracts shall not be automatic and shall require the consent in writing of all parties to the contract.

c. No debt collection agency that collects child support payments shall:

1. charge interest or otherwise impose a charge or fee for its services that exceeds fifteen percent of each child support payment collected.

2. charge interest or otherwise impose a charge or fee with respect to child support payments collected primarily through the efforts of a

governmental entity.

3. charge interest or otherwise impose a charge or fee for a current payment of child support.

4. impose a charge or fee for the costs of an application.

5. impose a charge or fee for legal services unless paid to an independent firm, practitioner or agency for actual costs incurred and unless agreed upon in writing by the potential client.

6. impose a charge or fee for the termination of a contract for the collection of child support.

7. impose a charge or fee that does not bear a reasonable relationship to the amount of child support actually collected.

8. designate a current payment of child support as arrears.

9. prohibit the termination of a contract for the collection of child support payments until arrears are paid.

10. include any terms in a contract for the collection of child support that conflict or are inconsistent with the terms set out in this subchapter.

d. an agreement for the collection of child support shall terminate automatically if no payment of child support has been collected by such debt collection agency for a period of six consecutive months.

e. Any debt collection agency that collects child support payments shall provide to a potential client a written disclosure form at the same time as such agency first furnishes such potential client with any informational or promotional materials, application or contract for services, regardless of the manner in which such materials are provided including, but not limited to, in-person contact, fax, regular mail, internet or other electronic means, containing, but not limited to, the following information prominently disclosed in a meaningful sequence:

1. No obligation. A potential client shall be advised that such client is under no obligation to hire a debt collection agency to collect child support payments on behalf of such client and that:

(i) New York city's office of child support enforcement (OCSE) provides child support enforcement services at no cost to families regardless of income and

(ii) OCSE's powers include, but are not limited to, garnishments against wages, liens on bank accounts and property, tax refund intercepts and the initiation of incarceration proceedings.

2. Fees.

(i) Application fees. A potential client shall be advised that child support debt collection agencies are prohibited by law from charging a fee for the costs of an application.

(ii) Prohibition against collection fees for child support payments that are not in arrears. A potential client shall be advised that debt collection agencies are prohibited by law from collecting fees for child support payments that are not in arrears and that it is unlawful for such an agency to designate a current payment of child support as

arrears.

(iii) Legal fees. A potential client shall be advised that child support debt collection agencies are prohibited by law from charging for legal services unless such fees are paid to an independent firm, practitioner or agency for actual costs incurred and unless agreed upon in writing by the potential client.

(iv) Early termination penalty. A potential client shall be advised that child support debt collection agencies are prohibited from imposing a charge or fee for the termination of a contract.

(v) Additional fees. A potential client shall be advised regarding any additional fees or potential additional fees, including but not limited to, the services for which such fees may be imposed, how such fees are calculated and when such fees are billed. A potential client shall also be advised that any fees must bear a reasonable relationship to the amount of child support actually collected.

(vi) A potential client shall be advised that child support debt collection agencies are prohibited by law from imposing any contract terms that conflict or are inconsistent with the provisions specified in the required disclosure form required under section 20-494.1 (e).

3. Contract terms and renewals.

(i) A potential client shall be advised that, by law, contracts for the collection of child support payments shall not be entered into for periods of longer than twelve consecutive months.

(ii) A potential client shall be advised that renewal of such contracts shall not be automatic and shall require the written consent of all parties to the contract.

(iii) A potential client shall be provided a summary of all contract termination provisions, including, but not limited to, the specific date on which such contract shall terminate. If no specific date is provided in the contract, the debt collection agency shall describe how and when such contract will terminate.

(iv) A potential client shall be advised that, by law, a contract cannot be renewed if, upon the renewal date, there has been no collection activity for the immediately preceding six consecutive months.

f. Any debt collection agency that collects child support payments shall furnish to the commissioner a current version of the disclosure form required under section 20-494.1 (e) together with a copy of such agency's standard contract for child support payment debt collection services within sixty days following the effective date of the local law that added such section.

g. As a condition to the issuance of a license to provide child support payment debt collection services, each applicant shall furnish to the commissioner a surety bond in the sum of five thousand dollars, payable to the city of New York, executed by such applicant and a surety approved by the commissioner. Such bond shall be conditioned upon the

applicant's compliance with the provisions of this subchapter and any rules or regulations promulgated hereunder, and upon the further condition that such applicant will pay to the city any fine, penalty or other obligation within thirty days of its imposition, or any final judgment recovered by any person who received child support payment debt collection services from a licensee thereunder and was damaged thereby. The commissioner may, by rule, increase the amount of the surety bond required by this section to an amount not to exceed twenty-five thousand dollars. The commissioner may by rule authorize an applicant to, in lieu of a bond, deposit cash to satisfy the requirements of this section in an amount equal to the sum of the surety bond required by this section.

h. The commissioner may by rule establish a fund to be administered by the comptroller and authorize an applicant for a license to provide child support payment debt collection services to, in lieu of a bond or cash equivalent, make contributions to such fund to satisfy the requirements of subdivision g of this section. The commissioner may promulgate such rules or regulations as are necessary for the administration of such fund including, but not limited to, rules setting forth the conditions for participation in the fund, the contributions required to be made to the fund and the circumstances under which disbursements will be made from the fund.

i. The commissioner may promulgate such rules as may be necessary to carry out the provisions of this section.

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Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
PART 6: DEBT COLLECTION

§5-76 Debt Collection.

Definitions. As used in this part:

Communication. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

Consumer. The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

Creditor. The term "creditor" means any person, firm, corporation or organization to whom a debt is owed or due or alleged to be owed or due or any assignee for value of said person, firm, corporation or organization.

Debt. The term "debt" means any obligation or alleged obligation of a consumer 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.

Debt collection procedures. The term "debt collection procedures" means any attempt by a debt collector to collect a debt after:

(1) with respect to accounts for which creditors are required to send periodic statements, the creditor has ceased sending those statements, or taken or threatened to take legal action against the consumer;

(2) with respect to 30-day accounts for which periodic statements are not required, the creditor has ceased sending bills for the debt or taken or threatened to take legal action against the consumer; and

(3) with respect to all other types of credit, the creditor has accelerated the unpaid balance of the debt or demanded the full balance due.

Debt collector. The term "debt collector" means an individual who, as part of his or her job, regularly collects or seeks to collect a debt owed or due or alleged to be owed or due. The term does not include:

(1) any officer or employee of the United States, any State or any political subdivision of any State to the extent that collecting or attempting to collect any debt owed is in the performance of his or her official duties;

(2) any person while engaged in performing an action required by law or regulation, or required by law or regulation in order to institute or pursue a legal remedy;

(3) any individual employed by a nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; or

(4) any individual employed by a utility regulated under the provisions of the Public Service Law, to the extent that New York Public Service Law or any regulation promulgated thereunder is inconsistent with this part.

Where a provision of this part limits the number of times an action may be taken by the debt collector, or establishes as a prerequisite to taking an action that the debt collector has received or done something, or prohibits an action if the debt collector has knowledge of or reason to know something, the term "debt collector" includes any debt collector employed by the same employer.

Location information. The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

Periodic statement. The term "periodic statement" means the statement of account certain creditors are required by 12 CFR 226.7(b) [Regulation Z] to send at the end of each billing cycle for which there is an outstanding disputed debit or credit balance in excess of \$1 in the account or with respect to which a finance charge is imposed.

Reasonable period of time. The term "reasonable period of time" means in the absence of knowledge of circumstances to the contrary, ten business days.

30-day account. The term "30-day account" means an account on which the outstanding balance at the end of a billing period is to be paid in full within a stated period of time without imposition of any finance charge.

§5-77 Unconscionable and Deceptive Trade Practices.

It is an unconscionable and deceptive trade practice for a debt collector to attempt to collect a debt owed, due, or asserted to be owed or due except in accordance with the following rules:

(a) *Acquisition of location information.* Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer in order to collect a debt, after the institution of debt collection procedures shall:

(1) identify himself or herself, state that he or she is confirming or correcting location information about the consumer and identify his or her employer when that identification connotes debt collection only if expressly requested;

(2) not state or imply that such consumer owes any debt;

(3) not communicate more than once, unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information; for the purposes of this paragraph (3), the debt collector need not count as a communication returned unopened mail or a message left with a party other than the person the debt collector is attempting to reach in order to acquire location information about the consumer, as long as the message is limited to a telephone number, the

name of the debt collector and a request that the person sought telephone the debt collector;

(4) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; provided that a debt collector may use his or her business name or the name of a department within his or her organization as long as any name used does not connote debt collection; and

(5) if the debt collector knows the consumer is represented by an attorney with regard to the subject debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, not communicate with any person other than that attorney for the purpose of acquiring location information about the consumer unless the attorney fails to provide the consumer's location within a reasonable period of time after a request for the consumer's location from the debt collector and:

(i) informs the debt collector that he or she is not authorized to accept process for the consumer; or

(ii) fails to respond to the debt collector's inquiry about the attorney's authority to accept process within a reasonable period of time after the inquiry.

The employer of a debt collector may not be held liable in any action brought under §5-77(a)(3) or (5) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite the maintenance or procedures reasonably adapted to avoid any such violation.

(b) *Communication in connection with debt collection.* A debt collector, in connection with the collection of a debt, shall not:

(1) After institution of debt collection procedures, without the prior written consent of the consumer given directly to the debt collector after the institution of debt collection procedures, or without permission of a court of competent jurisdiction, communicate with the consumer in connection with the collection of any debt;

(i) at any unusual time or place known, or which should be known, to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock ante meridian and before 9 o'clock post meridian time at the consumer's location;

(ii) if the debt collector knows the consumer is represented by an attorney with respect to such debt and if the debt collector has knowledge of the attorney's name and address or can readily ascertain such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer, except any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited;

(iii) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer or supervisor prohibits the consumer from receiving such a communication; or

(iv) with excessive frequency. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that more than twice during a seven-calendar-

day period is excessively frequent. In making its calculation, the debt collector need not include any communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than one who is responsible for the debt as long as the message is limited to a telephone number, the name of the debt collector and a request that one who is responsible for the debt telephone the debt collector; or any communication which is required by law or chosen from among alternatives of which one is required by law.

The employer of a debt collector may not be held liable in any action brought under §5-77(b)(1)(ii)-(iv) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation.

(2) In order to collect a debt, and except as provided by §5-77(a), communicate with any person other than the consumer, his or her attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, the attorney of that debt collector, or the attorney for that debt collector's employer, without the prior written consent of the consumer given directly to the debt collector after the institution of debt collection procedures, or without the prior written consent of the consumer's attorney or without the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy.

(3) Communicate with any person other than the consumer's attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, a debt collector to whom or to whose employer the debt has been assigned for collection, a creditor who assigned the debt for collection, or the attorney of that debt collector or the attorney for that debt collector's employer in a manner which would violate any provision of this part if such person were a consumer.

(4) After institution of debt collection procedures, communicate with a consumer with respect to a debt if the consumer has notified the debt collector in writing that the consumer wishes the debt collector to cease further communication with the consumer with respect to that debt, except that any communication which is required by law or chosen from among alternatives of which one is required by law is not hereby prohibited.

The debt collector shall have a reasonable period of time following receipt by the debt collector of the notification to comply with a consumer's request, except that any debt collector who knows or has reason to know of the consumer's notification and who causes further communication shall have violated this provision.

The debt collector may, however:

(i) communicate with the consumer once in writing:

(A) to advise the consumer that the debt collector's further efforts are being terminated or;

(B) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or;

(C) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specific remedy if that is a remedy he is legally entitled to invoke and if he actually intends to invoke it; and

(ii) respond to each subsequent oral or written communication from the consumer.

(5) For the purpose of §5-77(b)(1)-(4), the term "consumer" includes the consumer's parent (if the consumer is a minor), guardian, executor, administrator, spouse (unless the debt collector knows or has reason to know that the consumer is legally separated from or no longer living with his or her spouse), or an individual authorized by the consumer to make purchases against the account which is the subject of the collection efforts. A request that the debt collector cease further communication, provided for under §5-77(b)(4), if made by the consumer's spouse or an individual authorized by the consumer to make purchases against the account, only affects the debt collector's ability to communicate further with the person making the request.

(c) *Harassment or abuse.* A debt collector, in connection with the collection of a debt, shall not engage in conduct the natural consequence of which is to harass, oppress or abuse any person in connection with a debt. Such conduct includes:

(1) the use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person;

(2) the use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader;

(3) the advertisement for sale of any debt to coerce payment of the debt;

(4) causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number;

(5) the publication of a list of consumers who allegedly refuse to pay debts, except to another employee of the debt collector's employer or to a consumer reporting agency or to persons meeting the requirements of 15 USC 1681a(f) or 15 USC 1681b(3); or

(6) except as provided by §5-77(a), the placement of telephone calls without meaningful disclosure of the caller's identity.

(d) *False or misleading representations.* A debt collector, in connection with the collection of a debt, shall not make any false, deceptive, or misleading representation. Such representations include:

(1) the false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform or facsimile thereof;

(2) the false representation or implication that any individual is an attorney or any communication is from an attorney;

(3) the representation or implication 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 to pursue such action;

(4) the threat to take any action that cannot legally be taken or that is not intended to be taken;

(5) the false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to:

(i) lose any claim or defense to payment of the debt; or

- (ii) become subject to any practice prohibited by this part;
- (6) the false representation of implication made in order to disgrace the consumer that the consumer committed any crime or other conduct;
- (7) the false representation or implication that accounts have been turned over to innocent purchasers for value;
- (8) the false representation or implication that documents are legal process;
- (9) the false representation or implication that documents are not legal process forms or do not require action by the consumer;
- (10) the false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by 15 USC 1681a(f);
- (11) the use of distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval;
- (12) the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer;
- (13) the use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization, unless the general public knows the debt collector's business, company or organization by another name and to use the true name would be confusing;
- (14) after institution of debt collection procedures, the false representation of the character, amount or legal status of any debt, or any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt, except that the employer of a debt collector may not be held liable in any action brought under this provision if the employer shows by a preponderance of the evidence that the violation was not intentional and occurred despite the maintenance of procedures reasonably adapted to avoid any such violation;
- (15) except as otherwise provided under §5-77(a) and except for any communication which is required by law or chosen from among alternatives of which one is required by law, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose;
- (16) the use of any name that is not the debt collector's actual name; provided that a debt collector may use a name other than his actual name if he or she uses only that name in communications with respect to a debt and if the debt collector's employer has the name on file so that the true identity of the debt collector can be ascertained; or
- (17) any conduct proscribed by New York General Business Law §§601(1), (3), (5), (7), (8), or (9).

(e) *Unfair practices.* A debt collector may not use any unfair or unconscionable means to collect or attempt to collect a debt. Such conduct includes:

- (1) the collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law;
- (2) the solicitation or use by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution;

(3) causing charges to be made to any person for communications by misrepresentation of the true purpose of the communication. Such charges include collect telephone calls and telegram fees;

(4) taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(i) there is no present right to possession of the property claimed as collateral;

(ii) there is no present intention to take possession of the property; or

(iii) the property is exempt by law from such dispossession or disablement;

(5) after institution of debt collection procedures, when communicating with a consumer by use of the mails or telegram, using any language or symbol other than the debt collector's address on any envelope, or using any language or symbol that indicates the debt collector is in the debt collection business or that the communication relates to the collection of a debt on a postcard, except that a debt collector may use his or her business name or the name of a department within his or her organization as long as any name used does not connote debt collection;

(6) after institution of debt collection procedures, communicating with a consumer regarding a debt without identifying himself or herself and his or her employer or communicating in writing with a consumer regarding a debt without identifying himself or herself by name and address and in accordance with §5-77(e)(5); or

(7) after institution of debt collection procedures, if a consumer owes multiple debts of which any one or portion of one is disputed, and the consumer makes a single payment with respect to such debts:

(i) applying a payment to a disputed portion of any debt; or

(ii) unless otherwise provided by law or contract, failing to apply such payments in accordance with the consumer's instructions accompanying payment. If payment is made by mail, the consumer's instructions must be written.

Any communication by a creditor made pursuant to §5-77(e)(7)(ii) shall not be deemed communication for the purpose of §5-77(b)(1)(iv).

The employer of a debt collector may not be held liable in any action brought under §5-77(e)(7) if the employer shows by a preponderance of the evidence that the violation was not intentional and resulted despite maintenance of procedures reasonably adapted to avoid any such violation; or

(8) engaging in any conduct prohibited by New York General Business Law §§601(2) or (4).

(f) *Validation of debts.* (1) Upon acceleration of the unpaid balance of the debt or demand for the full balance due, the following validation procedures shall be followed by debt collectors who are creditors or who are employed by creditors as defined by 15 USC 1602(f) [Truth in Lending Act] but who are not required to comply with 15 USC 1637(a)(8) [Fair Credit Billing Act], and who do not provide consumers with an opportunity to dispute the debt which is substantially the same as that outlined in 15 USC 1637(a)(8) and regulations promulgated thereunder:

Within five days of any further attempt by the creditor itself to collect the debt, it shall send the customer a written notice containing:

(i) the amount of the debt;

(ii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed valid by the debt collector;

(iii) a statement that, if the consumer notifies the debt collector in writing within the thirty-day period at the address designated by the debt collector in the notice, that the debt, or any portion thereof is disputed, the debt collector shall either:

(A) make appropriate corrections in the account and transmit to the consumer notification of such corrections and an explanation of any change and, if the consumer so requests, copies of documentary evidence of the consumer's indebtedness; or

(B) send a written explanation or clarification to the consumer, after having conducted an investigation, setting forth to the extent applicable the reason why the creditor believes the account of the consumer was correctly shown in the written notice required by §5-77(f)(1) and, upon the consumer's request, provide copies of documentary evidence of the consumer's indebtedness. In the case of a billing error where the consumer alleges that the creditor's billing statement reflects goods not delivered in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless it determines that such goods were actually delivered, mailed, or otherwise sent to the consumer and provides the consumer with a statement of such determination.

(iv) if the debt collector is not the original creditor, a statement that, upon the consumer's written request within the thirty-day period, sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor;

(v) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.

(2) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector who is not a creditor and not employed by a creditor shall, unless the following information is contained in an initial written communication, or the consumer has paid the debt, send the consumer a written notice containing:

(i) the amount of the debt;

(ii) the name of the creditor to whom the debt is owed;

(iii) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(iv) a statement that if the consumer notifies the debt collector in writing within the thirty-day period at the address designated by the debt collector in the notice that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector;

(v) a statement that, upon the consumer's written request within the thirty-day period sent to the address designated by the debt collector in the notice, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor; and

(vi) an address to which the consumer should send any writing which disputes the validity of the debt or any portion thereof or any writing requesting the name and address of the original creditor.

(3) If, pursuant to §§5-77(f)(1) or 5-77(f)(2) of this Regulation the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall not attempt to collect the amount in dispute until the debt collector obtains and mails to the consumer verification of the debt or a copy of the judgment or the name and address of the original creditor.

The debt collector shall maintain for one year from the date the notice was mailed, records containing documentation of the date such notice was mailed, the date the response, if any, was received and any action taken following such response.

(4) The failure of a consumer to dispute the validity of a debt under §5-77(f) shall not be construed by any court as an admission of liability by the consumer.

(g) *Liability.* The employer of a debt collector is liable for the debt collector's violation of §5-77. A debt collector who is employed by another to collect or attempt to collect debts shall not be held liable for violation of §5-77.

§5-78 Deceptive Forms.

It is a deceptive and unconscionable trade practice for any person to design, compile and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

§5-79 Severability.

If any provision of this part or the application of such provision to any person or circumstances shall be held unconstitutional or invalid, the constitutionality of the remainder of the part and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§5-80 Citation Form.

This part may be cited as Consumer Protection Law Regulations Part 6.