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MARYLAND  
STATE COLLECTION AGENCY  
LICENSING BOARD

ADVISORY NOTICE  
REGULATORY ALERT

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May 11, 2020

**DEBT PURCHASERS: CERTAIN LICENSING STANDARDS FOR  
COLLECTIONS AND OPERATIONS**

In order to maintain a collection agency license an applicant or licensee must satisfy the Maryland Collection Agency Licensing Board, among other things, that it is of good moral character and has a general fitness to warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently. Some collection agencies operating in Maryland own and seek to collect consumer claims that were purchased by the collection agency after the consumer defaulted on the underlying obligation (i.e., the collection agency purchased a claim that was in default). This Advisory is intended for all licensed Maryland collection agencies that are collecting such consumer claims (“debt purchaser”). The guidance in this Advisory is intended to clarify the Board’s expectations about certain factors that will be part of the Board’s assessment of an applicant or licensee’s general fitness to warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently.

- **Compliance with Collection Laws**

A debt purchaser shall comply with all collection laws relevant to collecting a consumer claim, including, but not limited to, the provisions of the Maryland Collection Agency Licensing Act, BR, §7-101 *et seq.*, the Maryland Consumer Debt Collection Act, CL, §14-201, *et seq.*; Sections 804 through 812 of the Fair Debt Collection Practices Act, 15 U.S.C., §1692 *et seq.*, the Maryland Consumer Debt Collection Actions Act, Md. Code Ann., Courts and Judicial Proceedings, §5-1201, *et seq.*, the Maryland Rules (including, but not limited to, Maryland Rules 3-306, 5-803(b)(6), 5-902(b)), the Maryland Consumer Loan Law, FI, §11-201, *et seq.* and CL, §12-301, *et seq.*

Examples of common compliance obligations are:

Not seeking to collect time-barred debt. A time-barred debt collection action may not be filed against a Maryland consumer, nor may one threaten or imply legal action on time-barred debt. This prohibition applies to debt purchasers and any attorney acting on their behalf. Recent changes to Maryland law provide that no payment toward, written or oral affirmation of, or any other activity on the debt that occurs after the expiration of the statute of limitations applicable to the consumer debt

collection action will revive the statute of limitations period. The foregoing revival bar applies notwithstanding any other provision of law.

Prior to any collection activity involving a Maryland consumer by a debt purchaser, or any third party collection agency or attorney collecting on the debt purchasers behalf, the Board expects the debt purchaser to: (1) have a reasonable legal basis to collect such debt; and (2) be able to substantiate any representation made to a Maryland consumer concerning the obligations and amounts claimed to be due and owing. And, debt collectors must have possession of debt documents prior to filing a collection action. Neither a debt purchaser nor any attorney acting on their behalf may file a debt collection action against a Maryland consumer related to the Maryland consumer's debt unless the debt purchaser possesses the documents required by C&JP §5-1203(b)(3) and required by Maryland Rule 3-306(d) to support consumer debt collection actions filed in the District Courts of Maryland.

Under the Maryland Consumer Debt Collection Act, a debt collector may not engage in any conduct that would violate Sections 804 through 812 of the Fair Debt Collection Practices Act. *See* CL, §14-202.

- **Accuracy and Validity of Purchased Defaulted Debt**

For any account in default when purchased by a debt purchaser, neither the debt purchaser, nor any third party collection agency or attorney collecting on the debt purchaser's behalf, shall engage in collection activity involving a Maryland consumer, including but not limited to the commencement of a consumer debt collection action against a Maryland consumer in a Maryland court, unless the debt was purchased through a purchase agreement with meaningful representations and warranties as to the accuracy and validity of the debt or the debt purchaser otherwise, independently substantiates the accuracy and validity of the debt.

- **Chain of Ownership**

Applicable law requires that a debt purchaser attempting to collect a debt be able to prove its ownership of any account it purchased. A debt purchaser, or their attorney, must be able to introduce evidence showing that the consumer account it is collecting was actually part of any sale of that account regardless of whether the debt purchaser purchased the account directly from the original lender or from any intermediary debt purchaser. Collection agencies that claim they comply with Maryland law by relying on testimonial evidence to prove the chain of ownership of a debt must be able to demonstrate to the Board that proof of chain of ownership testimony is based upon personal knowledge and is provided under penalties of perjury and covers all transactions starting from the original creditor until the debt purchaser purchased the account.

Debt purchasers should not fully redact from any bill of sale and/or affidavit of sale the name or number assigned to the portfolio of accounts, including the number assigned to the dataset comprising the portfolio of accounts associated with any bill of sale and/or affidavit of sale, the general terms of

any bill of sale and/or affidavit of sale, or any bill of sale's and/or affidavit of sale's specific reference to the debt being sued upon.

- **Compliance and Risk Management**

Honest and efficient operations require that a business have policies and procedures in effect that permit the business to monitor and adjust its operations on an on-going basis. The Board expects that a debt purchaser will maintain an appropriately tailored enterprise-wide risk management system addressing all aspects of the debt purchaser's business activities. The enterprise-wide risk management system should identify, measure, monitor, and control risks through adequate policies and procedures and internal controls given the debt purchaser's size, operational complexity, and overall risk profile, and it should incorporate an adequate compliance management system. If appropriate, the debt purchaser shall employ legal counsel, compliance officers, and/or other managers responsible for compliance oversight, who will identify reasonably foreseeable internal and external violations of applicable laws by their employees, agents, representatives, affiliates, in-house counsel, and outside counsel.

If reasonably applicable given a debt purchaser's size or operational complexity, a debt purchaser should maintain an independent internal audit function that reports to the appropriate senior management and/or Board of Directors and that is designed to ensure that major business risks are appropriately managed and that the debt purchaser's risk management and internal control framework are effectively operating. The independent audit function, and the individuals assigned to perform this function, shall use auditing methodologies and protocols based on accepted auditing practices.

The Maryland Collection Agency Licensing Board strongly encourages all collection agencies doing business in Maryland to review this advisory to ensure safe and sound operations and compliance with Maryland laws when collecting on consumer claims in Maryland.

Questions regarding this advisory may be sent to Betty Yates, Assistant Director of Licensing, by telephone at (410) 230-6150 or by email at [betty.yates@maryland.gov](mailto:betty.yates@maryland.gov).



Office of the Commissioner of Financial Regulation  
Maryland Department of Labor