



BRIAN SANDOVAL
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

BRUCE BRESLOW
Director

FINANCIAL INSTITUTIONS DIVISION

GEORGE E. BURNS
Commissioner

December 5, 2016

Haydn Richards, Partner
Bradley, Arant, Boult, Cummings, LLP
1615 L. Street, NW, Suite 1350
Washington, D.C. 20036

RE: **NRS 649.059 and NAC 649.280 Advisory Opinion Request dated November 15, 2016**

Dear Mr. Richards:

The State of Nevada Financial Institutions Division ("NFID") received your petition for the issuance of an advisory opinion, pursuant to NAC 232.040, concerning the interpretation of NRS 649.059 and NAC 649.280. You made the request as the legal representation ("Petitioner") for your clients. The names of such clients were not disclosed; therefore, the NFID will review this matter as hypothetical.

Facts

The opinion request states that the residential mortgage servicers and collection agencies ("Agencies") you represent throughout the country utilize both customizable and machine-derived form letters. It was also stated that the submission of customizable letters to NFID is viewed as a burdensome task due to the number of letters used, and securing prior approval interferes with the Agencies operations.

The Petitioner argues the absence of the provision in statute or regulation that obligates a licensee to submit all letters for review and approval. Nevada Revised Statutes ("NRS") 649.059 provides:

The Commissioner [of the Financial Institutions Division] *may* require collection agencies to submit any printed form of agreements, listing sheets, acknowledgments, communications or other documentation used in its business for the Commissioner's approval or disapproval (emphasis added).

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The use of the word *may* in NRS 649.059 makes it a permissive statute, allowing the Commissioner of the NFID the discretion on whether or not the submission of certain documentation, such as customizable forms and letters, is to be required. Nevada Administrative Code (“NAC”) 649.280 requires only machine-derived form letters to be submitted. NAC 649.280 states:

1. All machine-derived form letters must be submitted to the Commissioner of Financial Institutions for review and approval before their actual use by the collection agency.
2. No collection agency may use any machine-derived form letter unless it has received prior written approval from the Commissioner.

Issue Presented

Whether collection agency licensees are (1) only required by regulation to submit for review and approval machined-derived form letters which are automatically prepared by a machine and which are designed to be mailed without the addition of any further words to them, except for the addition of the appropriate names and addresses; and (2) not required to submit for pre-approval customizable letters which contemplate the addition of further words to them.

Analysis

NRS 649.059 states:

[t]he Commissioner may require collection agencies to submit any printed form of agreements, listing sheets, acknowledgments, communications or other documents used in its business for the Commissioner’s approval or disapproval.

NAC 649.280 states:

1. All machine-derived form letters must be submitted to the Commissioner of Financial Institutions for review and approval before their actual use by the collection agency.
2. No collection agency may use any machine-derived form letter unless it has received prior written approval from the Commissioner.

NAC 649.020 defines “machine-derived form letters”:

“Machine-derived form letters” means letters which are automatically prepared by a machine and which are designed to be mailed without the addition of any further words to them, except for the addition of the appropriate names and addresses.

The NFID agrees with the Petitioner’s interpretation that the presence of the word *may* in the provisions of NRS 649.059 makes it a permissive statute which allows the Commissioner of the NFID the discretion to not require the submission of certain customizable forms. However, the Commissioner has been granted the statutory authority and responsibility to enforce all sections of NRS Chapter 649 including, but not limited to, NRS 649.365 and 649.375.

NRS 649.365(2)(b) provides in relevant part that "...a collection agency licensed under this chapter shall not: use any printed forms which may mislead or confuse the public."; and NRS 649.375(1) [a] collection agency, or its manager, agents or employees, shall not: use any device, subterfuge, pretense or deceptive means or representations to collect any debt, nor use any collection letter, demand or notice which simulates a legal process or purports to be from any local, city, county, state or government authority or attorney.

To ensure compliance with NRS Chapter 649 including, but not limited to, NRS 649.365, 649.375 and the Fair Debt Collection Practices Act ("FDCPA"); the NFID, by the Commissioner's discretion and the provisions of NRS 649.059 and NAC 649.280, reviews all machine-derived form letters, all printed forms of agreements, listing sheets, acknowledgments, communications or other documents used in its business for approval or disapproval.

Conclusion

Given the plain language of NRS Chapter 649 that grants the Commissioner of the NFID the responsibility to oversee, and the right to exercise discretion in, the enforcement of the provisions under said Chapter; all correspondence sent to Nevada residents and/or sent on behalf of Nevada clients shall be submitted to the NFID for review and will continue to require prior approval. Such correspondence include all machine-derived form letters; all printed forms of agreements; listing sheets; acknowledgments; communications or other documents used in its business.

Sincerely,



George E. Burns
Commissioner
Financial Institutions Division