



## **Policy Statement 2007-6**

*Reissued with technical corrections on July 22, 2009*

### **DEPARTMENT POLICY CONCERNING PRE-JUDGMENT SETTLEMENT AGREEMENTS UNDER § 26-2229A(4)(d) OF THE IDAHO COLLECTION AGENCY ACT**

**ISSUE: Collecting, or Attempting to Collect Attorney Fees, Costs, or Other Charges  
Against Debtors as Part of the Settlement of a Collection Lawsuit**

This Policy Statement supersedes and replaces Policy Statement 2007-1. Pursuant to Idaho Code § 26-2229A(4), licensees under the Idaho Collection Agency Act (Act) are prohibited from collecting, or attempting to collect, any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses:

- a. Are expressly authorized by statute;
- b. Are allowed by court ruling against the debtor;
- c. Have been judicially determined;
- d. Are provided for in a written form agreement, signed by both the debtor and the licensee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses; or
- e. Reasonably relate to the actual cost associated with processing a demand draft or other form of electronic payment on behalf of a debtor for a debt payment, provided that the debtor has preauthorized the method of payment and has been notified in advance that such payment may be made by reasonable alternative means that will not result in additional charges, fees or expenses to the debtor.

The Department has received several inquiries concerning its interpretation of Idaho Code § 26-2229A(4)(d). The Department has also received several written form agreements submitted for approval by licensees under Idaho Code § 26-2229A(4)(d). Recognizing that it is in the public interest to facilitate mutually agreed-upon settlements of collection lawsuits, and to guide licensees in their compliance with Idaho Code § 26-2229A(4)(d), the Department issues this Policy Statement 2007-6.

If a licensee meets each of the following three (3) requirements in the settlement of a collection lawsuit, the Department will deem the agreed-upon settlement approved under Idaho Code § 26-2229A(3)(d), thus enabling licensees under the Act to enter into prejudgment settlement agreements in which licensees and debtors may mutually agree upon settlement terms that may include interest or other charges, fees, or expenses incidental to the debtor's principal obligation.

1. Evidence of the settlement agreement must be in a writing delivered to the debtor by the licensee and available for the Department's review in the debtor's file maintained by the licensee;
2. The settlement amount may not exceed the total of, (i) the amount of the principal obligation, (ii) court filing fees, (iii) accrued interest, and (iv) actually incurred third-party costs, including attorney fees as permitted by law; and

**Policy Statement 2007-6**  
**Prejudgment Settlement Agreements**  
**Reissued on July 22, 2009**  
**Page 2**

3. The settlement amount may only include the items set forth in paragraph 2, above, and may not exceed amounts permitted by law, calculated as of the settlement date.

It will not be necessary for licensees to submit written settlement agreements to the Department for approval. However, licensees must maintain sufficient records to document compliance with all three (3) of the requirements set forth above to the satisfaction of the Department. The record retention requirements of the Act apply to all such documentation.

Dated this \_\_\_\_\_ day of July, 2009

---

Gavin M. Gee  
Director, Idaho Department of Finance