



Frequently Asked Questions

Idaho Collection Agency Act

[Medical Recovery Services, LLC vs. Strawn](#), 156 Idaho 153, 321 P.3d 703 (2014)

The following frequently asked questions (FAQs) together with associated answers are intended to provide guidance to licensees under the Idaho Collection Agency Act (Act) of the Department's interpretations of the Act and the Idaho Supreme Court's March 19, 2014, [Medical Recovery vs. Strawn](#) decision. These FAQs may be updated from time to time, and although the Department's objective is to provide reasonable interpretations of the Act based on specific factual scenarios, Idaho courts may or may not agree with the Department's interpretations.

Q: As a collection agency we receive accounts for collection from landlords and property managers for debts based on rental or lease agreements. In addition to periodic rental/lease payments, these agreements commonly include payment obligations by renters or lessors for damages that they may cause to the premises beyond normal wear and tear. Are these contractual payment obligations part of the "principal obligation" or incidental to the "principal obligation" for purposes of applying [Idaho Code § 26-2229A\(4\)](#)?

A: For the purpose of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department's view is that a payment obligation for damages to the premises under a rental/lease agreement is a separate "principal obligation" that collection agencies can collect on behalf of creditors. Rather than being subordinate to a rental/lease payment obligation, an agreement to pay for damages in a rental or lease agreement is dependent upon the happening of a future event unrelated to the nonpayment of rent. Therefore, it is the Department's position that a payment obligation for damages that arises under a rental/lease agreement stands alone as a separate and distinct "principal obligation."

Q: As a collection agency we receive accounts for collection that include both principal and interest pursuant to underlying payment agreements between debtors and creditors. For purposes of applying [Idaho Code § 26-2229A\(4\)](#), are collection agencies authorized to collect interest payment obligations from debtors?

A: For the purposes of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department's view is that debtors and creditors are expressly authorized by statute to contract for the payment of finance charges, including interest, on terms as agreed to by the parties ([Idaho Code § 28-42-201](#)). Consequently, it is the Department's position that payment obligations for finance charges, when based upon debtors' agreements, may be collected by collection agencies pursuant to [Idaho Code 26-2229A\(4\)\(a\)](#) as being "expressly authorized by statute."

Q: As a collection agency, should we have the underlying agreement in hand before attempting to collect?

A: Yes. The Department will apply the Court’s reasoning in *Strawn* by reviewing the character and nature of debts that collection agencies are collecting, or attempting to collect, from Idaho debtors. In light of *Strawn*, collection agencies collecting from Idaho debtors must be able to substantiate to the Department the legal basis underlying attempts to collect all amounts, including fees or charges, however labeled, that are subordinate to the debt and thus, “incidental to the principal obligation.” Collection agencies must either have the relevant underlying agreement in hand, or have it readily accessible for requests for substantiation by debtors and/or the Department.

Q: Does the *Strawn* case apply to debt buyers operating in Idaho?

A: Yes. *Strawn* applies to all persons or entities required to be licensed under the Idaho Collection Agency Act.

Q: As a collection agency we receive accounts from banks/credit unions that include overdraft fees as well as the actual amount of the overdraft. Can we collect the overdraft fees?

A: For the purpose of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department views an overdraft fee as a finance charge for a loan/extension of credit. As such, overdraft fees may be collected by collection agencies on behalf of their bank/credit union clients, as authorized by [Idaho Code 26-2229A\(4\)\(a\)](#) when such finance charges/overdraft fees are based on an agreement between the contracting parties within the meaning of [Idaho Code § 28-42-201](#).

Q: As a debt buyer we characterize the charge-off account balance at time of purchase to be the “principal obligation” for purposes of collection under [Idaho Code 26-2229A\(4\)](#). Does the *Strawn* case impact our characterization on this?

A: No. The characterization described in the above question was incorrect before the *Strawn* decision – and it remains incorrect after the *Strawn* decision. A fee or charge incidental to the “principal obligation” does not morph into the “principal obligation” by virtue of an account changing hands.

Q: Are debt buyers expected to itemize every fee and charge all the way back to the original bill? As some accounts may be five or seven years past due, it is practically impossible to identify every discrete fee that led to the charged-off balance.

A: All individuals and entities licensed under the Idaho Collection Agency Act (Act) are expected to comply with the provisions of the Act. The Idaho Supreme Court interpreted provisions of the Act when it issued the *Strawn* decision, and all individuals and entities licensed under the Act are expected to comply with that interpretation. The Idaho Department of Finance (Department) has described its understanding of the Court’s decision in *Strawn* by publishing [Guidance](#) as an aid to licensees. Neither the Act nor the Court’s interpretation of the Act includes an exemption based on the difficulty in applying the law to a preferred business model or method.

Q. As a collection agency we receive accounts where the outstanding balances assigned for collection include government taxes or fees (e.g. accounts for telephone services, utilities, or for monies owed to a government agency or instrumentality). Are such taxes and fees considered a part of the “principal obligation” and therefore collectable by a collection agency under the provisions of [Idaho Code 26-2229A\(4\)](#)?

A. Yes. For the purposes of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department’s view is that taxes and governmental fees incurred at the time a good or service is provided, or at the time that a good or service is contracted to be provided, represent a portion of the “principal obligation” for purposes of collection under [Idaho Code 26-2229A\(4\)](#). Additionally, where such fees are incidental to a future occurrence, such as a statutory penalty imposed for non-payment as may be the case in an account owed to a taxing authority, the Department would view the inclusion of a statutory fee or penalty as meeting the exception found at [Idaho Code 26-2229A\(4\)\(a\)](#).

Q. As a collection agency we sometimes receive accounts for collection that consist of debts owed to a “public agency” as that term is defined at [Idaho Code §67-2327](#). Does the *Strawn* decision stand for the proposition that we cannot attempt to collect reasonable collection fees that have been included in the account by the public agency under the provisions of [Idaho Code §67-2358\(1\)\(b\)](#)?

A. No. For the purposes of conducting compliance examinations of licensees under the Idaho Collection Agency Act, the Department’s view is that that reasonable collection fees imposed, in compliance with the provisions of [Idaho Code §67-2358](#), by a “public agency,” as that term is defined at [Idaho Code § 67-2327](#), may be collected by collection agencies pursuant to [Idaho Code 26-2229A\(4\)\(a\)](#) as being “expressly authorized by statute.”

Q. As a collection agency we sometimes receive accounts for collection from clients that include late payment fees. For purposes of applying [Idaho Code § 26-2229A\(4\)](#), can late payment fees be wrapped into the “principal obligation” for purposes of collection under the provisions of the Idaho Collection Agency Act?

- A. No. It is the Department’s interpretation that *Strawn* stands for the proposition that unless one or more of the exceptions enumerated in [Idaho Code § 26-2229A\(4\)](#) are met, individuals and entities subject to the provisions of the Idaho Collection Agency Act may not collect, or attempt to collect, from Idaho debtors anything incidental to the “principal obligation.” In *Strawn*, the Court upheld a finding that the term “principal obligation” was limited in meaning to money owed for services provided, and that attorney fees were “subordinate to the debt” and thus, “incidental to the principal obligation.” For purposes of applying [Idaho Code § 26-2229A\(4\)](#), it is the Department’s position that the Court’s reasoning in *Strawn* applies equally to “late payment fees” and other types of fees or charges, however labeled, that are subordinate to the debt and thus, “incidental to the principal obligation.”
-