

STATE OF COLORADO

COLLECTION AGENCY BOARD

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October 18, 1989

RE: Mechanic's Liens

This letter is in response to your inquiry as to whether the filing of a mechanic's lien by a collection agency is regulated by the Colorado Fair Debt Collection Practices Act ("the Act"). This opinion does not constitute a formal opinion of the Executive Director or the Board.

The collection of debts by third-party collection agencies is regulated by the Act and requires licensure by the Board. Ordinarily, a creditor collecting its own debts is exempt from the Act unless the creditor uses a third-party name. See §12-14-103(2), C.R.S. The Act covers the collection of debts from consumers including business debts if an individual ("natural person") is obligated to pay the business debt. See §12-14-103(4) and (6), C.R.S.

The Act regulates only collection activity and not litigation. Its focus is on communication with a consumer and others about the debt. The Act does not specify which activities constitute collections as opposed to litigation, nor does the federal Fair Debt Collection Practices Act on which the state Act is premised. However, the Federal Trade Commission which is primarily responsible for the federal Act's enforcement has issued unofficial opinion letters indicating that traditional collection activities include sending dunning letters and making collection calls to consumers. Litigation activities include the provision of legal advice and the filing of lawsuits. Notices legally required prior to the initiation of lawsuits are also considered to be litigation. See FTC Staff Commentary on the Fair Debt Collection Practices Act, §803(2), Comment 2.

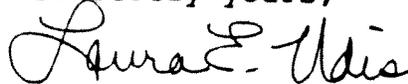
I am unaware of any federal or Colorado cases holding that

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the filing of a mechanic's lien is collection activity. In my opinion, it appears that service of the notice of intent and the filing of the mechanic's lien fall within the realm of litigation. As a result, I would not be inclined to recommend that the Board take action against a collection agency which only files and serves such documents. If, however, the collection agency takes other traditional collection action and calls or writes the consumer about the lien, that entity must be licensed with this office as a collection agency.

Although it is my opinion that a collection agency may serve a notice or file a mechanic's lien without violating the Act, it may be engaging in the unauthorized practice of law. That determination would be outside of the scope of the Board's authority and would have to be made by the Colorado Supreme Court's Unauthorized Practice of Law Committee.

Sincerely yours,

A handwritten signature in cursive script that reads "Laura E. Udis".

LAURA E. UDIS
Executive Director

LEU/bc

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