



# *Rules and Regulations*

Pertaining to relations between Forwarder and Forwardee:

The following are approved as the operative regulations pertaining to forwarding and receiving, and the relations between forwarder and forwardee. These Rules and Regulations are also the code for the guidance of the Officers of the Association and the Grievance Committee in determining the rights of the forwarder and the forwardee.

Nothing contained in the Rules and Regulations is intended to vest in any lay agency the authority to practice law. It is expressly understood that the Rules and Regulations are merely a guide of the members of this Association, and do not, by express authority or by implication, authorize the performance of any act which is either unlawful or unethical.

## **Commission Rates**

1. Rates of commission and fees are matters of agreement or contract between creditor and collector, forwarder and forwardee, and the Association does not presume to establish any fixed policy that is intended to be binding upon its members.

The term “commercial claim,” in its most common usage means, “A commercial claim arising from an obligation to pay for goods sold or leased, services rendered, or monies loaned for use in the conduct of a business or profession, and not for personal consumption.” For the purposes of these Rules and Regulations, this definition confirms that the concept of the commercial claim encompasses a liability incurred in a business or profession. This differs from a retail or noncommercial claim which arises from the sale of goods or services or the loan of money to an individual primarily for personal, family or household purposes.

It shall be mandatory upon the forwarder to state in his forwarding instructions the exact terms upon which the claim or account is forwarded. If the

forwarder, after having accepted the claim on the rates quoted by the forwarder, should determine that the rate at which the claim was first forwarded is inapplicable, it shall be mandatory upon him to so notify the forwarder and secure forwarder’s consent to increase the rate of commission to an amount mutually acceptable, or to return the item to the forwarder.

In all cases, commission rates are a matter of agreement between the forwarder and forwardee and it is open to the parties to agree to a basis of charges, it being impossible to adequately define the value of services in any recommended schedule.

## **Commissions**

2. The terms and conditions under which a claim is forwarded shall be binding on the forwardee if he accepts and acknowledges the claim. These terms will not be varied by a substitution of terms stipulated by the forwarder, unless the substitution is made known to the forwarder who agrees in writing to the change or substitution. A forwarder who is dissatisfied with the terms or conditions in a forwarding proposal may either return the claim, or refuse to handle it until new terms or conditions are mutually agreed upon.
3. Where a forwarder specifies certain terms in his transmittal, and the forwarder declines to accept the claim under those terms but agrees to perform the services under different terms and the forwarder subsequently requests the forwarder to proceed with the claim, remaining silent on the matter of compensation or terms the forwarder shall be deemed to have accepted said offer and shall be bound by the terms of the forwarder’s offer.
4. In the absence of an agreement to the contrary, collections by installments or in dividends from bankruptcy, probate, receivership, assignments and other kindred proceedings, shall be treated as collections closed in one transaction.

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5. Claims filed in bankruptcy, probate, receivership and any other kindred proceedings, representing a balance of an account, a part of which has been collected prior to bankruptcy by the forwarder, shall be considered as a balance of the original account only, in computing commissions charged on dividends, subsequently paid on the claim through the bankruptcy, probate, receivership and other kindred proceedings.
  6. The mere formal filing of a claim in bankruptcy, receivership, probate and other kindred proceedings, and the receiving and remitting of a dividend or dividends thereon, entitles the forwarder to commissions.
  7. A forwarder having relinquished or returned an account to a forwarder may not, after giving notice to that effect, accept payment from the debtor, unless he believes that his refusal to accept such payment would result in a loss to the creditor, in which event he may accept such payment and immediately account to the forwarder for such collection in full, without retaining any fee for making such collection.
  8. Where a forwarder returns a claim and later the debtor sends his check to the creditor in settlement of the claim, the forwarder is not entitled to a fee.
  9. Where a forwarder is authorized to take goods or property in settlement of a claim, the compensation is to be determined by the worth of the service, viewed from the standpoint of the work done, the amount involved, the character of the employment and the results accomplished.
  10. Where, by agreement, the forwarder is to take the debtor's property, sell it, and apply the proceeds to the liquidation of the claim, and the forwarder holds a sufficient amount to cover the claim and returns the balance to the debtor, the charge is based on the money collected on the claim.
  11. A forwarder, having taken property or money from a debtor as settlement of a claim, may not, on a controversy arising with forwarder or creditor regarding compensation, return the property or money to the debtor. Once the property or money is taken and received as payment of the claim, the property or money is in the constructive possession of the creditor and cannot be returned without the creditor's authority.
  12. In the absence of an agreement to the contrary, a contingent fee or commission contract, express or implied, must be taken as an assumption that the claim in question is a valid one and is actually pending at the time the forwarder employed to handle it begins to work, from which it allows that:
    - a. Where a claim is settled directly with the forwarder and acknowledgement has been made and work done by the forwarder on the claim prior to the time the forwarder obtains actual notice of payment to the forwarder, the forwarder shall be entitled to one-third of the agreed fee as remuneration for his services.
    - b. The forwarder shall not interfere between a forwarder and debtor in such a manner as to make impossible the collection of a regularly forwarded claim by the forwarder, but in the event of such interference the forwarder shall be entitled to the compensation for his efforts to a sum equal to one-third of the agreed fee.
  13. When a claim is paid directly, after it has arrived at the office of the forwarder, and after demand for payment has been made upon the debtor, the forwarder is entitled to commissions according to the agreed fee. If the forwarder fails to acknowledge receipt of a claim within three days he shall be deprived of any commissions earned on direct payments.
  14. Where the forwarder in the process of working the claim discovers that it has been previously paid, he shall be entitled to only one-half of the commission.
  15. Where a claim is paid directly, prior to the arrival of claim in the office of the forwarder, it shall be the duty of the forwarder to notify the forwarder immediately of the fact of payment. If for any reason the forwarder fails to give the forwarder immediate notice of the payment, and the latter does work on the claim or incurs expense, he shall be entitled to one-half of the commission for the work done, the rendering of which services might have been prevented by immediate notice on the part of the forwarder. Where the fact of payment does not become immediately known to the forwarder by the neglect of the creditor, and thus the forwarder is prevented from giving immediate notice to the forwarder, the forwarder is obviously entitled to compensation from creditor and the forwarder should necessarily be paid.

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16. Where a claim is sent to a forwarder by mistake of the forwarder and the mistake or fact of payment has been learned by the forwarder in the course of his work and by him brought to the attention of forwarder, the forwarder shall be entitled to one-half the commission for the services he has rendered.
  17. Where a debtor sends a post-dated check directly to the creditor before the forwarder receives or acts upon a claim, and the maturity of the check is subsequent to the forwarder's action, he shall not be entitled to commissions as made on a collection unless he can show that work induced the debtor subsequently to meet the check. There must be persuasive evidence that the check would not have been paid had he not acted; in short, that his acting in the matter induced the payment of the check. Failure, however, to notify the forwarder immediately of the receipt of such check will entitle the forwarder, upon its payment, to full compensation for work done.
  18. Where the demand for payment on the part of a forwarder is followed by negotiations between debtor and creditor, whereby credit is extended to a later date or a note given or goods are returned or adjustment of any sort made, the forwarder is entitled to the full agreed compensation for his services.
  19. Where a matter is pending in the office of a forwarder and the creditor intervenes for the purpose of accepting a note settlement for the debt, thereupon withdrawing the claim from the hands of the forwarder, the forwarder is entitled at once to his fees and commissions computed according to the contract of forwarding, the same as if money had been collected, and the forwarder need not wait for his compensation until the note or notes are paid.
  20. Where a settlement in notes or acceptances is authorized or ratified by the creditor, and the notes and acceptances are retained by the creditor, the forwarder is at once entitled to his compensation, according to the contract of forwarding. Where the notes are allowed to remain in hands of the forwarder until the date of maturity, the compensation of the forwarder must be delayed until the notes are actually collected. In the event of a note settlement which has been authorized by the creditor, where the notes are retained by the creditor, and the forwarder is discharged by the payment of this regular fee, and where subsequently, the notes are not paid at maturity and are returned to the forwarder for collections, it shall be understood that the employment to collect the notes is a new one and in the event of failure to collect, the forwarder shall not be required to refund the commission previously received; and in the event of collection of the notes the forwarder again shall be entitled to the usual commissions based upon the amount collected.
  21. When a claim is placed with a forwarder on a contingent fee basis, the forwarder obtains thereby an interest in the matter to the extent of his fee, and such a matter cannot be withdrawn within six months time in the absence of fault on his part, without remunerating him for his services and expenses. Forwarded claims which have been in the forwarder's hand for at least three months time, upon which no collection has been made by the forwarder, and upon which no arrangement for payment has been made, shall be returned to the forwarder upon request.
  22. When a forwarder reports a claim to be uncollectible without suit and the creditor chooses not to sue, the forwarder, on the request of the forwarder or creditor, shall return the claim without charge.
  23. Where a forwarder succeeds in collecting part and has promise of the remainder, the forwarder may not recall the claim without paying the forwarder his fee on the deferred portion, and should the debtor's promise fail of fulfillment, after the creditor has requested the forwarder to return the balance of the claim, the forwarder is not required to return the fee, since his employment has ceased, the creditor assuming the risk of fulfillment of the promised payment. If the matter is left in the hands of the forwarder and the debtor fails to fulfill his promise, the forwarder does not earn a fee on the deferred portion unless and until it is paid.
  24. A forwarder may not withdraw a claim from a forwarder for the purpose of filing it directly in probate, bankruptcy, receivership or any kindred proceedings, without first compensating the forwarder for the reasonable value of the work he has done.
  25. A creditor or forwarder shall not send a claim against a bankrupt entity to a forwarder on condition that it be handled without charge.

26. Where a forwarder is called upon to remit the proceeds of a collection to different and conflicting parties, he shall impound the money in some responsible depository and notify his correspondents that it will be released only upon receipt of a directive in writing from both parties asserting a right to it, mutually agreeing upon its distribution.
27. The forwarder shall make settlement with the forwarder at least once each month, furnishing the forwarder with a suitable statement that can be retained, showing thereon the amount of the collection and the name of the creditor or creditors, on whose account or accounts the payment is to be applied. It is strongly recommended, however, that when a forwarder obtains full payment of a claim or substantial payment on a claim, an accounting be made upon clearance of the check.

### Miscellaneous

28. The forwarder shall give forwarder all possible information concerning any forwarded claim or account at the time of forwarding.
29. The forwarder shall acknowledge items of business received by him within three days after receipt, either accepting or rejecting the same. If rejecting, he shall give reasons for so doing. Failure to promptly acknowledge receipt of forwarded claims shall deprive the forwarder of any claim to commissions earned on direct payments, either to creditor or forwarder.
30. A forwarder, employing two or more agencies in the same or different towns to handle the same matter without the agencies being informed of the situation, must in case of settlement pay to each a reasonable fee for services rendered.
31. The forwarder shall not request a credit report on a debtor from one forwarder and without just cause send the account to another forwarder for collection.
32. No forwarder shall send out a claim, or claims, which he has previously forwarded, without disclosing that fact.
33. No forwarder or forwarder shall fail to answer promptly inquiries pertaining to pending matters.
34. A forwarder shall promptly return all papers and/or remit all monies collected on claims that have been withdrawn because of the forwarder's neglect or inability to handle the same.
35. A forwarder shall not retain an item of business if he cannot handle it properly for any reason, including the following:
- Because of friendly relations with debtor.
  - Because of obligations to debtor or to the other persons closely associated with debtor.
  - Because of obligations to another forwarder or creditor which prevent his adequately carrying out the instructions of the forwarder. In such instances, the forwarder shall place the forwarder in full possession of all facts or return the claim at once.
36. The forwarder is responsible for representing and protecting the forwarder. If a commission loss occurs because of a direct payment to the creditor, the forwarder must assume the loss, make remittance of the agreed fee to the forwarder. The forwarder may not communicate directly with the creditor except with consent of the forwarder, unless the forwarder's refusal to honor the forwarding contract justifies direct contact with creditor.
37. No forwarder shall charge and retain in one case the fees claimed in another, where there is no authority to do so, particularly where the bill for such fees is in dispute.

The Association realizes that it is practically impossible to draw a set of Rules that will govern all cases because there are so many side issues that can be attached to any given set of facts that it would change the whole viewpoint in that one case. Therefore, it is recommended that, where a difference of opinion does occur between forwarder and forwarder, members will put into practice the fundamental principles of the "Golden Rule."



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