

CHAPTER 25

DEBT ADJUSTMENT AND CREDIT COUNSELING

Authority

N.J.S.A. 17:1-8.1, 17:1-8.9, 17:16G-4, 5 and 6.

Source and Effective Date

R.1992 d.323, effective July 23, 1992.
See: 24 N.J.R. 2106(a), 24 N.J.R. 2836(a).

Executive Order No. 66(1978) Expiration Date

Chapter 25, Debt Adjustment and Credit Counseling, expires on July 23, 1997.

Chapter Historical Note

Chapter 25, Debt Adjustment and Credit Counseling, became effective August 17, 1987 with Subchapter 1, Debt Adjustment and Credit Counseling Fees, adopted as R.1987 d.334. See: 19 N.J.R. 901(b), 19 N.J.R. 1544(b). Pursuant to Executive Order No. 66(1978), Chapter 25 was readopted as R.1992 d.323. See: Source and Effective Date. Subchapter 2, Offices, Licensing, Bonds, Investigations, Examinations, was adopted as part of R.1992 d.323, but effective August 17, 1992. See: 24 N.J.R. 2106(a), 24 N.J.R. 2836(a).

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. DEBT ADJUSTMENT AND CREDIT COUNSELING FEES

3:25-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means P.L. 1979, c.16.

"Billing cycle" means the period between successive billing dates, when the client is charged by the licensee. For the purpose of determining the maximum amount of the fees which may be charged, it is assumed that the length of the billing period is approximately 30 days. If the billing cycle is substantially longer or shorter than 30 days, the amount of the maximum fee which may be charged shall be adjusted accordingly.

"Client" means an individual or a group of individuals comprising a single family unit.

"Commissioner" means the Commissioner of Banking.

"Credit counseling" means any guidance or educational program or advice offered by a nonprofit social service agency or nonprofit consumer credit counseling agency for the purpose of fostering the responsible use of credit and debt management.

"Debt adjustment" means either acting or offering to act for a consideration as an intermediary between a debtor and his creditors for the purpose of settling, compounding, or otherwise altering the terms of payment of any debts of the debtor, or, to that end, receiving money or other property from a debtor, or on behalf of the debtor, for payment to, or distribution among, the creditors of the debtor, but shall not include the activities of an attorney-at-law of this State who is not principally engaged as a debt adjuster, a person who is a regular full-time employee of a debtor and who acts as an adjuster of his or her employer's debts, a person acting pursuant by any order or judgment of court, or pursuant to authority conferred by any law of this State or the United States, a person which is a creditor of the debtor or an agent of one or more creditors of the debtor and whose services in adjusting the debtor's debts are rendered without cost to the debtor, or a person who at the request of a debtor arranges for or makes a loan to the debtor and who at the authorization of the debtor acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting those debts.

"Debtor" means an individual debtor or two or more individuals who are jointly and severally indebted.

"Department" means the Department of Banking.

"Licensee" means an agency licensed to provide debt adjustment and credit counseling services pursuant to N.J.S.A. 17:16G-2.

"Office" shall include a principal office and a branch office.

Amended by R.1992 d.323, effective August 17, 1992.
See: 24 N.J.R. 2106(a), 24 N.J.R. 2836(a).
Revised text.

3:25-1.2 Debt adjustment fees

The maximum fee that may be charged by a licensee to a client for debt adjustment services is \$25.00 per billing cycle.

Amended by R.1992 d.323, effective August 17, 1992.
See: 24 N.J.R. 2106(a), 24 N.J.R. 2836(a).
Revised text.

3:25-1.3 Credit counseling fees

The maximum fee that may be charged by a licensee to a client for credit counseling services is \$60.00 per billing cycle.

Amended by R.1992 d.323, effective August 17, 1992.
See: 24 N.J.R. 2106(a), 24 N.J.R. 2836(a).
Revised text.

3:25-1.4 Prior notice

With respect to the fees that may be charged pursuant to this subchapter, it is the responsibility of the licensee to provide to the client in writing, prior to providing any debt adjustment or consumer credit counseling service, a statement of the fees to be charged.

Amended by R.1992 d.323, effective August 17, 1992.
See: 24 N.J.R. 2106(a), 24 N.J.R. 2836(a).
Revised text.

SUBCHAPTER 2. OFFICES, LICENSING, BONDS, INVESTIGATIONS, EXAMINATIONS

3:25-2.1 Principal and branch offices

(a) A licensee shall establish a place of business in this State which shall be designated as the principal office. The license for the principal office shall be prominently displayed in the public area of the office.

(b) In addition to the principal office, an applicant or licensee may establish a branch office or offices elsewhere in this State for the conduct of debt adjusting and credit counseling activities. The license for the branch office shall be prominently displayed in the public area of the office.

(c) An applicant shall apply for a principal office license and may apply for a branch office license by making application to the Department. A licensee may apply for a branch office license by making application to the Department. Such application shall be made on forms as prescribed by the Commissioner and shall include, but shall not be limited to, the name of the applicant or licensee, the location of the proposed principal or branch office, the license fee for each office, and proof of bond in the amount set forth in N.J.A.C. 3:25-2.3. The Commissioner shall issue the license upon determining that the applicant is qualified to be licensed and possesses the necessary financial resources to sustain its operation.

(d) No licensee shall engage in debt adjusting or credit counseling activities at an office until it has received a license for that office.

3:25-2.2 License fees

Each licensee shall pay to the Department a biennial license fee of not more than \$500.00 for each office it maintains. The fee shall be due on January 1 of each even numbered calendar year. When the initial license or certificate is issued in the second year of the biennial period, the fee shall be an amount equal to one-half the fee for the biennial period.

3:25-2.3 Bond

(a) A licensee shall maintain a bond in an amount not less than \$50,000 for each principal office and \$25,000 for each branch office from a surety company authorized to do business in this State. The bond shall run to the State, pro rata, for its benefit and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the licensee in the course of activity as a licensee. The bond shall not be payable for claims made by business creditors. No bond shall comply with this section unless it contains a provision that it shall not be cancelled for any cause unless notice of intention to cancel is filed with the Department at least 30 days before the day upon which cancellation shall take effect.

(b) Those persons who hold a license pursuant to the Act on August 17, 1992 shall not be required to comply with this section until October 16, 1992.

3:25-2.4 Refusal to issue, revocation and suspension of licenses

(a) The Commissioner may revoke or suspend a license if, after notice and hearing conducted in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, the Commissioner determines that the licensee:

1. Has violated any provision of the Act or any order rule or regulation issued pursuant to the Act;
2. Has failed to pay any fee, penalty, or other lawful levy imposed by the Commissioner;
3. Has withheld information or made a material misstatement in an application for a license or in any other submission to the Department;
4. Has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or has had a final judgment entered against him or her in a civil action upon grounds of fraud, misrepresentation or deceit;

5. Is associating with, or has associated with, any person who has been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or who has had a final judgment entered against him or her in a civil action upon grounds of fraud, misrepresentation or deceit;

6. Has become insolvent or has acted in a way that indicates that the licensee's debt adjustment and credit counseling business would not be operated in a financially responsible manner;

7. Has demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise; or

8. Has engaged in any other conduct which would be deemed by the Commissioner to be grounds to deny a license.

(b) The Commissioner may refuse to issue a license for any reason for which he or she could revoke or refuse to renew a license.

3:25-2.5 Right of investigation and examination

The Commissioner may make such investigations and examinations of any licensee or other person as he or she deems necessary to determine compliance with the Act, regulations issued pursuant to the Act, or orders. For such purposes, he or she may examine, or compel by subpoena, the production of all relevant books, records, and other documents and materials relative to an examination or investigation. The costs of examination shall be borne by the licensee.