

CHAPTER 25

DEBT ADJUSTMENT AND CREDIT COUNSELING

Authority

N.J.S.A. 17:1-8 and 15e, 17:1C-33 et seq., and 17:16G-4, 5 and 6.

Source and Effective Date

R.2003 d.59, effective January 7, 2003.
See: 34 N.J.R. 2552(a), 35 N.J.R. 607(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 25, Debt Adjustment and Credit Counseling, expires on July 5, 2008. See: 40 N.J.R. 837(a).

Chapter Historical Note

Chapter 25, Debt Adjustment and Credit Counseling, was adopted as R.1987 d.334, effective August 17, 1987. See: 19 N.J.R. 901(b), 19 N.J.R. 1544(b).

Pursuant to Executive Order No. 66(1978), Chapter 25, Debt Adjustment and Credit Counseling, was readopted as R.1992 d.323, effective July 23, 1992. As part of R.1992 d.323, effective August 17, 1992, Subchapter 2, Offices, Licensing, Bonds, Investigations, Examinations, was adopted. See: 24 N.J.R. 2106(a), 24 N.J.R. 2836(a).

Pursuant to Executive Order No. 66(1978), Chapter 25, Debt Adjustment and Credit Counseling, was readopted as R.1997 d.336, effective July 23, 1997. As a part of R.1997 d.336, effective August 18, 1997, Subchapter 2, Offices, Licensing Bonds, Investigations, Examinations, was renamed Subchapter 2, Licensing Requirements, and Subchapter 3, Administrative Penalties and Examination, was added. See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Chapter 25, Debt Adjustment and Credit Counseling, was readopted as R.2003 d.59, effective January 7, 2003. See: Source and Effective Date. See, also, section annotations.

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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.

“Acts” means the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq. and the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10-22 et seq.

“Affiliated” means a relationship in which the high-cost home loan credit counseling service is directly or indirectly controlled by, or under the common control of, the directors, principal officers and/or any shareholder of another company.

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

“Commissioner” means the Commissioner of Banking and Insurance.

“Covered home loan” means a home loan in which the total points and fees payable in connection with the loan, excluding either a conventional prepayment penalty or not more than two bona fide discount points, exceed four percent of the total loan amount, or 4.5 percent of the total loan amount if the total loan amount is \$40,000 or less, and 4.5 percent of the total loan amount if the loan is insured by the Federal Housing Administration or guaranteed by the Federal Department of Veterans Affairs, or a home loan that is considered a high-cost home loan under the Home Ownership Security Act.

“Credit counseling” means any guidance or educational program or advice offered by a nonprofit social service agency or nonprofit consumer credit counseling agency regarding the use of credit or debt management.

“Debt Adjuster Act” means the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq.

“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 a person or two or more persons who are jointly and severally indebted.

"Department" means the Department of Banking and Insurance.

"High-cost home loan" means a home loan for which the principal amount of the loan does not exceed \$350,000 as of 2003, adjusted annually to include the last published increase of the housing component of the national Consumer Price Index, New York-Northeastern New Jersey Region, and in which the terms of the loan meet or exceed one or more of the thresholds as defined in N.J.S.A. 46:10B-24. The annual adjustment in the principal amount of the loan shall be reflected through a notice of administrative change published in the New Jersey Register.

"High-cost home loan credit counseling" means the counseling of a borrower on a high-cost home loan transaction which includes the financing of points and fees in connection with the high-cost home loan.

"Home loan" means an extension of credit primarily for personal, family or household purposes, including an open-end credit plan, other than a reverse mortgage transaction, in which the loan is secured by a mortgage or deed of trust on real estate in this State upon which there is located or there is to be located a one to six family dwelling which is or will be occupied by a borrower as the borrower's principal dwelling; or a security interest in a manufactured home which is or will be occupied by a borrower as the borrower's principal dwelling.

"Home Ownership Security Act" means the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq.

"Licensee" means a nonprofit social service or credit counseling agency licensed pursuant to N.J.S.A. 17:16G-2.

"Non-affiliated third party agency" means a non-profit social service or credit counseling agency which is not under the influence, control, or direction of any outside party such

as a landowner, real estate broker, lender, or consultant seeking to derive a profit or gain from the counseling services.

"Non-profit social service agency" or "nonprofit credit counseling agency" means any corporation duly organized under Title 15 or 15A of the New Jersey Statutes, and no part of the assets, income or profit of which is distributable to, or enures to the benefit of its members, directors or officers, except to the extent permitted under the Debt Adjustment and Credit Counseling Act, N.J.S.A. 17:16G-1 et seq.

"Points and fees" shall have the meaning as defined in the New Jersey Home Ownership Security Act of 2002, N.J.S.A. 46:10B-22 et seq.

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.

Amended by R.1997 d.336, effective August 18, 1997.
See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Added "Nonprofit social service agency"; deleted "Billing cycle" and "Office"; and amended "Act", "Commissioner", "Department", and "Licensee".

Amended by R.2003 d.59, effective February 3, 2003.
See: 34 N.J.R. 2552(a), 35 N.J.R. 607(b).

In "Credit counseling", substituted "regarding the use of credit or debt management" for "for the purpose of fostering the responsible use of credit and debt management"; in "Debtor" substituted "a person" for "an individual debtor" and "persons" for "individuals".

Amended by R.2004 d.81, effective February 17, 2004.
See: 35 N.J.R. 4187(a), 36 N.J.R. 943(a).

Rewrote the section.

3:25-1.2 Fees charged by licensees

(a) A licensee may charge a fee to cover the cost of providing debt adjustment and credit counseling.

1. The fee for debt adjustment shall not exceed one percent of the gross monthly income of the client but in no case more than \$25.00 in any one month. This fee may be waived at the discretion of the licensee.

2. The fee that the licensee may charge a client for credit counseling services shall not exceed \$60.00 in any one month.

(b) The licensee shall provide to the client a written statement of the fees to be charged before providing any debt adjustment or credit counseling service.

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.

Repeal and New Rule, R.1997 d.336, effective August 18, 1997.
See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Section was "Debt adjustment fees".

Amended by R.2003 d.59, effective February 3, 2003.
See: 34 N.J.R. 2552(a), 35 N.J.R. 607(b).

Rewrote (a)2.

3:25-1.3 (Reserved)

Repealed by R.1997 d.336, effective August 18, 1997.
See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Section was "Credit counseling fees".

3:25-1.4 (Reserved)

Repealed by R.1997 d.336, effective August 18, 1997.
See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).
Section was "Prior notice".

SUBCHAPTER 2. LICENSING OR REGISTRATION REQUIREMENTS

3:25-2.1 Eligibility for license or registration

(a) No person other than a nonprofit social service agency or a nonprofit credit counseling agency duly licensed in accordance with the Debt Adjuster Act and this chapter shall act as a debt adjuster or provide credit counseling.

(b) An unlicensed nonprofit social service agency or nonprofit credit counseling agency may provide high-cost home loan credit counseling if it is registered in accordance with this chapter. In order to provide high-cost home loan credit counseling, agencies licensed pursuant to the Debt Adjuster Act shall also be registered in accordance with this chapter.

(c) To be eligible for a license under the Debt Adjuster Act, a nonprofit social service agency or nonprofit consumer credit counseling agency shall establish a board of directors whose function shall be to establish the policies of the agency. No more than 40 percent of the members of the board shall have as their principal employer any corporation, association or institution that offers credit to the general public.

(d) To be eligible for registration as a high-cost home loan credit counselor, an agency, including an agency licensed pursuant to the Debt Adjuster Act, shall be a non-affiliated third party non-profit credit counseling agency approved by the United States Department of Housing and Urban Development.

New Rule, R.1997 d.336, effective August 18, 1997.

See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Former section recodified to N.J.A.C. 3:25-2.3.

Amended by R.2004 d.81, effective February 17, 2004.

See: 35 N.J.R. 4187(a), 36 N.J.R. 943(a).

In (a), inserted "duly licensed in accordance with the Debt Adjuster Act and this chapter" following "credit counseling agency"; added a new (b); recodified former (b) as (c) and inserted "under the Debt Adjuster Act" following "To be eligible for a license"; added (d).

3:25-2.2 Application for license or registration

(a) Prior to providing debt adjustment or credit counseling services, other than high-cost home loan credit counseling, a corporation shall obtain a license from the Department. The license application shall be on a form approved by the Commissioner and shall include the following information:

1. A Certificate of Incorporation bearing the New Jersey Secretary of State's dated filing stamp or, for foreign (out-of-State) corporations, a copy of the Cer-

tificate of Authority to do business in New Jersey bearing the New Jersey Secretary of State's dated filing stamp;

2. If the corporation uses a doing business as name, a copy of the registration of fictitious corporate name bearing the New Jersey Secretary of State's dated filing stamp;

3. A completed certified consent certificate authorizing a criminal record check for each corporate director or trustee;

4. A completed biographical information form and personal financial statement for each director or trustee;

5. Information on whether any director, trustee or member of an advisory or other similar committee has ever had a license, permit or other authorization, other than a driver's license, been suspended or revoked by this or any other state or has been affiliated directly or indirectly with any other organization that has had such a license suspended or revoked;

6. An unqualified financial statement prepared by a certified public accountant or a public accountant demonstrating the financial condition of the corporation;

7. The applicant's balance sheet and profit and loss statement for the last fiscal period, if available;

8. If the primary source of operating funds is obtained from outside sources such as financial institutions, retail merchants, industrial concerns, labor unions, trade associations, religious organizations, foundations, etc., a schedule citing the names and addresses of all such individual contributors and the amount contributed and the amount anticipated for the current fiscal period;

9. A list of salaries or compensation paid to individual directors, trustees, officers, members of the advisory council or other persons in managerial positions during the last fiscal period or if the applicant is recently incorporated, the estimated amounts to be paid to all such individuals during the current fiscal period;

10. A schedule citing the types and amounts of insurable risks including:

i. Fidelity bonds covering every director, trustee, officer, employee or anyone who will have authority to act on the licensee's behalf;

ii. Indemnity insurance covering robbery, burglary, holdup, embezzlement or fraud by insiders, outsiders, forgery, errors and omissions, misplacement, etc.; and

iii. Fire and extended coverage on the office(s), furniture, fixtures and equipment, etc.;

11. Proof of the surety bond required by N.J.A.C. 3:25-2.5;

12. The address of all offices to be located in this State;

13. The license application fee required by N.J.A.C. 3:23-2.1; and

14. Additional information, which may be specifically requested by the Commissioner from a particular applicant.

(b) Upon determination that an applicant is qualified for licensure under the Debt Adjuster Act, the Commissioner shall issue a license for each location in this State where credit counseling and debt adjustment activities will take place. The license shall be prominently displayed in the public area of the office.

(c) A licensee shall advise the Department of a change of any legal name, business name or a change of the address that appears on the license by noting the change on the current original license and returning it to the Department for cancellation and reissuance of a new license containing updated information. No fee shall be required for such changes. If the notice is to change a legal or business name, the request shall be accompanied by a copy of the document filed in the office of the Secretary of State, County Clerk or other authority evidencing that the change has been properly recorded.

(d) Applicants for registration as a high-cost home loan credit counseling service shall not be affiliated with any lender of high-cost home loans and shall furnish acceptable proof of approval by the United States Department of Housing and Urban Development as a Housing Counseling Agency.

(e) Prior to providing high-cost home loan credit counseling services, a non-profit social service or credit counseling agency shall be registered by the Department. The registration application shall be on a form approved by the Commissioner and shall include the following information:

1. A Certificate of Incorporation bearing the New Jersey Secretary of State's dated filing stamp or, for foreign (out-of-State) corporations, a copy of the Certificate of Authority to do business in New Jersey bearing the New Jersey Secretary of State's dated filing stamp;

2. If the corporation uses a doing business as name, a copy of the registration of fictitious corporate name bearing the New Jersey Secretary of State's dated filing stamp;

3. Information on whether any director, trustee or member of an advisory or other similar committee has ever had a license, permit or other authorization, other than a driver's license, suspended or revoked by this or any other state or has been affiliated, directly or indirectly, with any organization that has had such a license suspended or revoked;

4. An unqualified financial statement prepared by a certified public accountant or a public accountant demonstrating the financial condition of the corporation;

5. A copy of the annual report of the nonprofit agency filed with the New Jersey Secretary of State pursuant to

N.J.S.A. 15A:5, or an equivalent report for non-New Jersey corporations;

6. The applicant's balance sheet and profit and loss statement for the fiscal period preceding the filing of the application, if available;

7. The registration application fee required by N.J.A.C. 3:23-2.1; and

8. A copy of the current HUD Certificate of Approval of the agency as a Housing Counseling Agency and a certified statement affirming that, as of the date of the application, the agency's approval by HUD as a Housing Counseling Agency remains in full force and effect.

(f) The Commissioner may request from a particular applicant any additional information that is necessary to determine an applicant's eligibility for registration.

(g) Upon determination that an applicant is qualified for registration as a high-cost home loan credit counselor, the Commissioner shall register each office location in this State from which the high-cost home loan credit counselor shall operate. Such registration shall be deemed approval pursuant to N.J.S.A. 46:10B-26g.

(h) The Department shall post on the Department's website at <http://www.state.nj.us/dobi/>, a list of the office locations of all registered credit counseling agencies approved to counsel borrowers on high-cost home loans.

(i) A registrant shall advise the Department of a change of business address. No fee shall be required for such changes.

New Rule, R.1997 d.336, effective August 18, 1997.
See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Former section recodified to N.J.A.C. 3:25-2.4.
Amended by R.2004 d.81, effective February 17, 2004.
See: 35 N.J.R. 4187(a), 36 N.J.R. 943(a).

In (a), inserted "other than high-cost home loan credit counseling," following "counseling services" in the introductory paragraph, amended the N.J.A.C. references in 11 and 13; in (b), inserted "for licensure under the Debt Adjuster Act" preceding "the Commissioner"; added (d) through (i).

Amended by R.2006 d.235, effective June 19, 2006.
See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

In (a)13 and (e)7, inserted "application" and substituted "3:23-2.1" for "3:25-2.4".

3:25-2.3 Office requirement

(a) A licensee or registrant shall have a place of business in this State.

(b) Prior to conducting debt adjusting or credit counseling at any new location, the licensee shall file with the Commissioner the address of the office and the license fee required by N.J.A.C. 3:25-2.2.

Recodified from N.J.A.C. 3:25-2.1 and amended by R.1997 d.336, effective August 18, 1997.

See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Section name changed; in (a), substituted "have a place" for "establish a place"; and rewrote (b). Former section recodified to N.J.A.C. 3:25-2.5.

Amended by R.2004 d.81, effective February 17, 2004.
See: 35 N.J.R. 4187(a), 36 N.J.R. 943(a).

In (a), inserted "or registrant" following "licensee".

3:25-2.4 Bond

(a) A licensee shall maintain a bond in an amount not less than \$50,000 for the first office and \$25,000 for each additional 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 debt adjuster or credit counselor and for the benefit of the Department for unpaid examination bills, unpaid penalties and any other unpaid obligation of the licensee to the Department, including, but not limited to, returned items submitted to the Department in payment of bills, penalties, charges or fees. 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 reason 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) The surety company shall pay consumers claims based on the damages directly incurred by the wrongful act, default, fraud or misrepresentation of the licensee.

(c) Attorney's fees, pre- or post-judgment interest, court costs and similar charges are not recoverable through the bond, unless such charges are included in a final judgment against the licensee and the surety company was given prior notice of the court action and an opportunity to respond.

(d) The bond shall not be payable for treble damage claims pursuant to the Consumer Fraud Act or any other State or Federal law.

Recodified from N.J.A.C. 3:25-2.3 and amended by R.1997 d.336, effective August 18, 1997.

See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

In (a), substituted "\$50,000 for the first office and \$25,000 for each additional office" for "\$50,000 for each principal office and \$25,000 for each branch office"; substituted "debt adjuster ... charges or fees" for "licensee"; and added last two sentences; rewrote (b); and added (c) and (d). Former section recodified to N.J.A.C. 3:25-3.3.

Recodified from N.J.A.C. 3:25-2.5 by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Former N.J.A.C. 3:25-2.4, License and registration fees, repealed.

3:25-2.5 Annual audit requirement

Each licensee shall have its financial records relating to debt adjustment audited annually by a certified public accountant or a public accountant. The auditor shall certify that the salaries and expenses paid by the licensee are reasonable compared to those incurred by comparable organizations providing similar services. The licensee shall be responsible for submitting or verifying the submission of the audit report to the Commissioner within 30 days of its issuance.

New Rule, R.1997 d.336, effective August 18, 1997.

See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Amended by R.2002 d.59, effective February 3, 2003.

See: 34 N.J.R. 2552(a), 35 N.J.R. 607(b).

In the third sentence, substituted "licensee shall be responsible for submitting or verifying the submission of the audit report" for "audit report shall be submitted".

Recodified from N.J.A.C. 3:25-2.6 by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Section was "Bond".

3:25-2.6 (Reserved)

Recodified as N.J.A.C. 3:25-2.5 by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Section was "Annual audit requirement".

SUBCHAPTER 3. PENALTIES AND EXAMINATION

3:25-3.1 Penalties

(a) The Commissioner may revoke, suspend or refuse to issue or renew a license, if after notice and hearing conducted in accordance with the Administrative Procedure 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 or applicant:

1. Has violated any provision of the Debt Adjuster Act or any order rule or regulation issued pursuant to that 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; or
7. Has demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise.

(b) The Commissioner may revoke, suspend or refuse registration as a high-cost home loan credit counselor if, after

notice and hearing as set forth in (a) above, the Commissioner determines that the registrant, applicant for registration or any officer, director or employee of either the registrant or applicant for registration has:

1. Issued a certification of counseling on a high-cost home loan or of alternate counseling on high-cost home loans without having fully provided the counseling as provided by the Home Ownership Security Act and this chapter;
 2. Failed to pay any fee, penalty, or other lawful levy imposed by the Commissioner;
 3. Withheld information or made a material misstatement in an application for registration or in any other submission to the Department;
 4. 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. 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. Demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise;
 7. Failed to retain its HUD approval as a Housing Counseling Agency; or
 8. Violated any provision of the Home Ownership Security Act or any order, rule or regulation issued pursuant to that Act.
- (c) In addition to the penalties in (a) above, any person who violates any provisions of the Debt Adjuster Act or the rules applicable to licensees shall be subject to a penalty of \$500.00 to be collected in a summary procedure under the "penalty enforcement law," N.J.S.A. 2A:58-1 et seq. and any agency registered as a high-cost home loan credit counselor who violates any provision of the Home Ownership Security Act or the rules applicable to such registrants shall be subject to penalties pursuant to N.J.S.A. 46:10B-28(d).
- (d) Any person who knowingly and willfully engages in the business of debt adjustment and credit counseling, other than high-cost home loan credit counseling, without a license in violation of the Debt Adjuster Act shall be guilty of a crime of the fourth degree pursuant to N.J.S.A. 2C:21-19f.

Recodified from N.J.A.C. 3:25-2.4 and amended by R.1997 d.336, effective August 18, 1997.

See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Section name changed; in (a), inserted "or refuse to issue or renew" and "or applicant"; deleted (a)8; and rewrote (b).

Amended by R.2003 d.59, effective February 3, 2003.

See: 34 N.J.R. 2552(a), 35 N.J.R. 607(b).

Added (c).

Amended by R.2004 d.81, effective February 17, 2004.

See: 35 N.J.R. 4187(a), 36 N.J.R. 943(a).

In (a), inserted "Debt Adjuster" preceding "Act" and substituted "that" for "the" in 1; added a new (b); recodified existing (b) and (c) as (c) and (d) and rewrote the paragraphs.

3:25-3.2 Injunctions

If the Commissioner has reason to believe that any person or licensee has engaged or is engaging in any practice or transaction prohibited by either of the Acts, the Commissioner may, in addition to any other remedies available, bring a summary action in the name of and on behalf of the State against the person or licensee and any other person concerned in or in any way participating or about to participate in those practices or transactions, to enjoin the person from continuing those practices or engaging in or doing any act in furtherance of those practices or in violation of the Acts.

New Rule, R.1997 d.336, effective August 18, 1997.

See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Amended by R.2004 d.81, effective February 17, 2004.

See: 35 N.J.R. 4187(a), 36 N.J.R. 943(a).

Inserted "either of" following "transaction prohibited by".

3:25-3.3 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 either of the Acts, these rules or orders issued by the Commissioner. 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.

Recodified from N.J.A.C. 3:25-2.5 and amended by R.1997 d.336, effective August 18, 1997.

See: 29 N.J.R. 2500(a), 29 N.J.R. 3719(a).

Substituted "these rules or orders issued by the Commissioner" for "regulations or orders" and added N.J.A.C. reference.

Amended by R.2004 d.81, effective February 17, 2004.

See: 35 N.J.R. 4187(a), 36 N.J.R. 943(a).

Inserted "either of" following "to determine compliance with" and "of the activities of an agency licensed under the Debt Adjuster Act" preceding "shall be borne".

Amended by R.2006 d.235, effective June 19, 2006.

See: 38 N.J.R. 10(a), 38 N.J.R. 2674(a).

Deleted former last sentence, which read: "The costs of examination of the activities of an agency licensed under the Debt Adjuster Act shall be borne by the licensee at the rates set forth in N.J.A.C. 3:1-6.6(b)."

SUBCHAPTER 4. ADDITIONAL REQUIREMENTS FOR HIGH-COST HOME LOAN CREDIT COUNSELING

Authority

N.J.S.A. 17:1-8, 8.1 and 15e, 17:9A-8.1 and 46:10B-22 et seq.

Source and Effective Date

R.2004 d.81, effective February 17, 2004.
See: 35 N.J.R. 4187(a), 36 N.J.R. 943(a).

3:25-4.1 Certification of receipt of high-cost home loan counseling

(a) Registered high-cost home loan credit counselors shall certify on a form approved by the Department that the consumer has received counseling on a high-cost home loan provided in accordance with the Home Ownership Security Act and the minimum standards set forth in N.J.A.C. 3:25-4.2.

(b) The certification shall include, but not be limited to:

1. The names of the borrower and of the individual who provided the counseling;
2. The time and place of the consultation;
3. The length of time of the consultation;
4. The name of the prospective lender;
5. The amount, term, interest rate, annual percentage rate ("APR"), points and fees of the prospective loan;
6. A statement that the advice given by the counselor meets or exceeds the standards required by this chapter;
7. The topics discussed;
8. The dated signatures of both the individual who provided the counseling and the consumer;
9. A statement that the high-cost home loan credit counselor is not affiliated with any high-cost home loan lender and is a non-affiliated third party agency as defined in N.J.A.C. 3:25-1.1; and

10. Information disclosing whether a fee has been paid to the high-cost home loan credit counselor for providing counseling to the particular borrower named on the certification and, if so, the amount of the fee and the identity of the payor.

(c) A high-cost home loan credit counselor shall not issue a certification if all counseling required by N.J.S.A. 46:10B-26 and this subchapter has not been provided.

3:25-4.2 Minimum standards for individuals providing high-cost home loan credit counseling

(a) High-cost home loan credit counselors, and the individuals they employ to counsel prospective high-cost home loan borrowers, shall:

1. Possess sufficient expertise and ability to provide counseling on high-cost home loans to consumers as prescribed in N.J.A.C. 3:25-4.3 in a reasonably competent manner;
2. Possess an adequate working knowledge of high-cost home loans, sub-prime loans and other basic loan forms; and
3. Have an adequate working knowledge of all pertinent New Jersey and Federal consumer credit and banking laws and regulations.

(b) High-cost home loan credit counselors may make arrangements for funding or the payment of fees for high-cost home loan credit counseling consistent with the restrictions specified in the HUD Housing Counseling Program Handbook 7610.1 as amended and supplemented, which is incorporated herein by reference and which is available at www.hudclips.org.

(c) If a high-cost home loan credit counselor receives a fee for high-cost home loan credit counseling or high-cost home loan alternative credit counseling from the borrower, they may not receive an additional fee for that particular certification from another source. This prohibition shall not, however, preclude a high-cost home loan credit counselor from receiving payments under contractual arrangements with, or receiving funding from lenders or other parties in addition to the receipt of such fees from borrowers.

(d) High-cost home loan credit counselors shall not employ individuals who have demonstrated unworthiness, incompetence, bad faith or dishonesty in transacting business or otherwise.

3:25-4.3 Minimum standards for certifications of high-cost home loan credit counseling

(a) Prior to providing a certification in compliance with N.J.S.A. 46:10B-26(g), persons providing high-cost home loan credit counseling shall review with the consumer the following:

1. The estimated total monthly payment on the loan based upon principal and interest and, if applicable, taxes, homeowner's insurance and any other costs to be included in the monthly payment;
2. The equity that currently exists in the borrower's home, to the extent it is known;
3. The effect of the loan's terms, including its actual interest rate, annual percentage rate, points, fees, any provision for a balloon payment and prepayment penalties;
4. The borrower's financial situation both before and after the prospective loan, including the impact that the loan will have on the borrower's general financial condition and monthly finances, any personal benefits, and

the advantages and disadvantages of proceeding with the high-cost home loan transaction;

5. The Federal Regulation X good faith estimate and Federal Regulation Z Truth in Lending Disclosure Statement, or other informational documentation supplied by the lender which provides the minimum information concerning the prospective high-cost home loan necessary for certification;

6. Opportunities for the borrower to seek other means of funding;

7. That the counselor is a non-affiliated third party agency and is not affiliated with any lender who offers high-cost home loans; and

8. Other information necessary to ensure that the consumer understands their obligations with regard to the prospective high-cost home loan and the ramifications of default.

3:25-4.4 Certification of alternate high-cost home loan credit counseling

(a) A high-cost home loan credit counselor may provide alternate counseling as set forth in this section and, thereafter, issue a certificate confirming its having done so. If the borrower, at the time of counseling, has an application pending for a high-cost home loan on which the borrower has not previously received high-cost home loan credit counseling, alternate counseling may only be given in addition to the counseling on the actual pending loan transaction required by N.J.A.C. 3:25-4.3.

(b) The alternate counseling shall be based upon three hypothetical loans as set forth in (c) below.

(c) Prior to providing a certification of alternate counseling, an individual providing high-cost home loan credit counseling shall discuss with the consumer the following:

1. A comparison of the following three types of hypothetical loans:

- i. A high-cost home loan;
 - ii. A home loan other than a high-cost home loan;
- and

iii. A home loan;

2. For each hypothetical loan, the estimated total monthly payment on the loan based upon principal and interest and, if applicable, taxes, homeowner's insurance and any other costs to be included in the monthly payment;

3. The equity that currently exists in the borrower's home, to the extent it is known;

4. The effect of each loan's terms including interest rate, annual percentage rate, points, fees, any provision for a balloon payment and prepayment penalties;

5. The borrower's financial situation both before and after each hypothetical loan, including the impact that the loan will have on the borrower's general financial condition and monthly finances, any personal benefits, and the advantages and disadvantages of proceeding with each hypothetical loan transaction;

6. Opportunities for the borrower to seek other means of funding;

7. That the counselor is a non-affiliated third party agency and is not affiliated with any lender which offers high-cost home loans; and

8. Other information necessary to ensure that the consumer understands their obligations with regard to the hypothetical loans and the ramifications of a default.

(d) High-cost home loan credit counselors shall certify on a form approved by the Department that the consumer has received alternate counseling on the high-cost home loans in accordance with this subchapter.

(e) The certification of alternate counseling shall include:

1. The names of the borrowers and of the individual who provided the counseling;

2. The time and place of the consultation;

3. The length of time of the consultation;

4. The amount, term, interest rates, annual percentage rates (APRs), points and fees of the hypothetical loans;

5. The topics discussed;

6. A statement that the advice given by the counselor meets or exceeds the standards required by this chapter;

7. The dated signatures of both the individual who provided the counseling and the consumer;

8. A statement that the high-cost home loan credit counselor is not affiliated with any high-cost home loan lender and is a non-affiliated third party agency as defined in N.J.A.C. 3:25-1.1; and

9. Information disclosing whether a fee has been paid to the high-cost home loan credit counselor for providing counseling to the particular borrower named on the certification and, if so, the amount of the fee and the identity of the payor.

(f) A high-cost home loan credit counselor shall not issue a certification of alternate counseling unless all counseling required by N.J.S.A. 46:10B-26 and this subchapter has been provided with regard to the hypothetical loans.

(g) For a period of 90 days subsequent to its being issued as provided in this section, a certification of alternate counseling issued by a registered high-cost home loan credit counselor may be used by the borrower for one or more loan transactions in satisfaction of the certification requirements of N.J.S.A. 46:10B-26g.

3:25-4.5 Books and records

(a) All agencies registered as high-cost home loan credit counselors shall maintain a current and continuing list of all individuals employed by them to provide high-cost home loan credit counseling.

(b) As part of its annual report to the Department, and at any time the Department requests, a high-cost home loan credit counselor shall submit to the Department a certified list of all individuals employed by it who provided such counseling and attest that those individuals are in compliance with the minimum requirements of N.J.A.C. 3:25-4.2.

(c) The high-cost home loan credit counselor shall maintain the following business records:

1. Copies of all certifications issued by it in the preceding three years;

2. The names of all consumers who applied to the agency for high-cost home loan credit counseling, which application did not result in the issuance of a certification, with an indication of the reason(s) for the non-issuance of the certification; and

3. The fees received for each certification issued by the counselor and the identity of the payor of the fee.

3:25-4.6 Continuing requirements for high-cost home loan credit counseling registrants

(a) By April 1st of each year, agencies registered as high-cost home loan credit counselors shall submit an annual report which shall contain:

1. A copy of their annual report last filed with the New Jersey Secretary of State pursuant to N.J.S.A. 15A:5-1 et seq. or an equivalent report for non-New Jersey corporations with documentation attesting to their continuing status as a nonprofit corporation;

2. A certified list of the individuals who provide high cost home loan counseling on behalf of the agency attesting that those individuals are in compliance with the minimum requirements of N.J.A.C. 3:25-4.2;

3. A report, on a form approved by the Department, containing:

i. The numbers of loan-specific and alternate counseling certifications issued during the year being reported on;

ii. The lenders to whom those certifications were provided;

iii. The number of high-cost home loans reviewed; and

iv. The number of high-cost home loans reviewed on which certifications were not issued; and

4. A certified statement affirming their current status as a HUD-approved Housing Counseling Agency.

(b) If a high-cost home loan credit counselor loses the approval of the Department of Housing and Urban Development (HUD) as a Housing Counseling Agency, the counselor must inform the Department immediately and cease to engage in high-cost home loan credit counseling, including the issuance of any certifications with respect to high-cost home loans.

(c) Notice of the loss of HUD approval as a Housing Counseling Agency shall be provided to the Department in writing and directed to:

New Jersey Department of Banking and Insurance
Department of Banking
Licensing Unit
PO Box 327
Trenton, New Jersey 08625-0327