

CHAPTER 25

DEBT ADJUSTMENT AND CREDIT COUNSELING

Authority

N.J.S.A. 17:1-15e 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

Chapter 25, Debt Adjustment and Credit Counseling, expires on January 7, 2008.

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.

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

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

“Commissioner” means the Commissioner of Banking and Insurance.

“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 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.

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

“Nonprofit social service agency” or “nonprofit credit counseling agency” means any corporation duly organized under Title 15 or 15A of the New Jersey Statutes, 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 Act.

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".

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)

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.

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)

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.

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 REQUIREMENTS

3:25-2.1 Eligibility for license

(a) No person other than a nonprofit social service agency or a nonprofit credit counseling agency shall act as a debt adjuster or provide credit counseling.

(b) To be eligible for a license, 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.

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.

3:25-2.2 Application for license

(a) Prior to providing debt adjustment or credit counseling services, 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 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. 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. 3:25-2.3;

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

13. The license fee required by N.J.A.C. 3:25-2.2; and

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

(b) Upon determination that an applicant is qualified, 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.

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.

3:25-2.3 Office requirement

(a) A licensee 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.

3:25-2.4 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.

Recodified from N.J.A.C. 3:25-2.2 by 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. 3:25-3.1.

3:25-2.5 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.

3:25-2.6 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".

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 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; or

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

(b) In addition to the penalties in (a) above, any person who violates any provisions of the Act or these rules 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.

(c) Any person who knowingly and willfully engages in the business of debt adjustment and credit counseling without a license 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).

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 the Act, 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 Act.

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

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

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 the Act, 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. The costs of examination shall be borne by the licensee at the rates set forth in N.J.A.C. 3:1-6.6(b).

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.