

DEBT MANAGEMENT

533A.1 Definitions.

As used in this chapter:

1. "*Creditor*" means a person for whose benefit moneys are being collected and distributed by licensees.
2. "*Debt management*" means the planning and management of the financial affairs of a debtor and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to the debtor's creditors in payment or partial payment of the debtor's obligations for a fee.
3. "*Debtor*" means any natural person.
4. "*Licensee*" means any individual, partnership, unincorporated association, agency or corporation licensed under this chapter.
5. "*Office*" means each location by street number, building number, city, and state where any person engages in debt management.
6. "*Superintendent*" means the superintendent of banking.

[C71, 73, 75, 77, 79, 81, § 533A.1]

533A.2 Licenses required exceptions.

1. No individual, partnership, unincorporated association, agency or corporation shall engage in the business of debt management in this state without a license therefor as provided for in this chapter, except that the following persons shall not be required to be licensed when engaged in the regular course of their respective businesses and professions:
 - a. Attorneys at law.
 - b. Banks, savings and loan associations, insurance companies and similar fiduciaries, regulated loan companies licensed under chapter 536 and industrial loan companies licensed under chapter 536A, authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function.
 - c. Abstract companies, while performing an escrow function.
 - d. Employees of licensees under this chapter.
 - e. Judicial officers or others acting under court orders.
 - f. Nonprofit religious, fraternal or co-operative organizations, including credit unions, offering to debtors gratuitous debt-management service.
 - g. Those persons, associations, or corporations whose principal business is the origination of first mortgage loans on real estate for their own portfolios or for sale to institutional investors.

2. The application for such license shall be in writing, under oath, and in the form prescribed by the superintendent. The application shall contain the name of the applicant; date of incorporation, if incorporated, and the address where the business is to be conducted; and similar information as to any branch office of the

applicant; the name and resident address of the owner or partners, or, if a corporation, association or agency, of the directors, trustees, principal officers, and agents, and such other pertinent information as the superintendent may require. If the applicant is a partnership, a copy of the certificate of assumed name or articles of partnership shall be filed with the application. If the applicant is a corporation, a copy of the articles of incorporation shall be filed with the application.

3. Each application shall be accompanied by a bond to be approved by the superintendent to the people of the state of Iowa in the penal sum of ten thousand dollars for each office, providing, however, the superintendent may require such bond to be raised to a maximum sum of twenty-five thousand dollars, and conditioned that the obligor will not violate any law pertaining to such business and upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents for the purpose of indemnifying debtors for loss resulting from conduct prohibited by this chapter. The aggregate liability of the surety to all debtors doing business with the office for which the bond is filed shall, in no event, exceed the penal sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving thirty days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. No individual, partnership, unincorporated association, agency or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of this chapter.

4. Each applicant shall furnish with the application a copy of the contract the applicant proposes to use between the applicant and the debtor, which shall contain a schedule of fees to be charged the debtor for the applicant's services.

5. At the time of making such application the applicant shall pay to the superintendent the sum of fifty dollars as a license fee for each of the applicant's offices and an investigation fee in the sum of one hundred dollars. A separate application shall be made for each office maintained by the applicant.

[C71, 73, 75, 77, 79, 81, § 533A.2]

85 Acts, ch 158, §1

533A.3 Investigation hearing.

1. Upon the filing of each application and the payment of such fees, the superintendent shall fix a date and a time for a hearing upon such application, and shall make an investigation of the facts concerning the application and the requirements provided for in subsection 3 of this section.

2. The superintendent shall grant or deny each application for a license within sixty days from the filing thereof with the required fee, unless the period is extended by written agreement between the applicant and the superintendent.

3. *a.* If the superintendent shall find the experience, financial responsibility, character and general fitness of the applicant is such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the purposes of this chapter, and that the applicant, or if the applicant is an unincorporated association, agency or partnership, then the individuals involved, or if the applicant is a corporation then the officers and directors thereof, have not been convicted of a felony or a misdemeanor involving moral turpitude, or have not had a record of having defaulted in payment of money collected for others, including the discharge of such debts through bankruptcy proceedings, the superintendent shall thereupon enter an order granting such application and forthwith issue and deliver a license to the applicant. The superintendent may require as part of the application a credit report and other information.

b. If the applicant has, at the time of the application, a license for an office located within ten statute miles of

the location of the office named in the application, no license shall be issued unless the superintendent finds that public convenience will be served by the issuance of such license.

c. No license shall be transferable or assignable.

4. If the superintendent finds the applicant not qualified by subsection 3 of this section, the superintendent shall enter an order denying such application and forthwith notify the applicant of the denial, returning the license fee. Within fifteen days after the entry of such order, the superintendent shall prepare written findings and shall forthwith deliver a copy thereof to the applicant.

[C71, 73, 75, 77, 79, 81, § 533A.3]

533A.4 Expiration date.

The license issued under this chapter shall expire on July 1 next following its issuance unless sooner surrendered, revoked or suspended, but may be renewed as provided in this chapter.

[C71, 73, 75, 77, 79, 81, § 533A.4]

533A.5 Renewal.

Each licensee on or before July 1 may make application to the superintendent for renewal of its license. The application shall be on the form prescribed by the superintendent and shall be accompanied by a fee of one hundred dollars, together with a bond as in the case of an original application. A separate renewal application shall be made for each office maintained by the applicant.

[C71, 73, 75, 77, 79, 81, § 533A.5]

533A.6 Appointment of process agent.

1. No licensee shall transact business until it shall have first appointed in writing the superintendent as agent of the licensee for service of process in this state. Service upon the superintendent or, in the superintendent's absence, any employee in charge of the superintendent's office, shall be of the same legal force and validity as if served upon any licensee under this chapter.

2. Whenever lawful process against any licensee shall be served upon the superintendent, two copies shall be furnished and the superintendent shall forthwith forward a copy of the process served on the superintendent, by certified mail, postpaid and directed to the licensee. For each service of process the sum of two dollars shall be collected, which shall be paid by the plaintiff at the time of such service, the same to be recovered by the plaintiff as part of the taxable costs, if the plaintiff prevails in the suit.

[C71, 73, 75, 77, 79, 81, § 533A.6]

533A.7 Revocation or suspension.

1. The superintendent may revoke or suspend any license issued or applied for under this chapter for the following causes:

a. Conviction of a felony or of a misdemeanor involving moral turpitude.

b. For intentionally violating any of the provisions of this chapter.

c. For fraud or deceit in procuring the issuance of a license or renewal under this chapter.

d. For indulging in a continuous course of unfair conduct.

e. For insolvency, bankruptcy, receivership or assignment for the benefit of creditors by a licensee or applicant for a license under this chapter.

2. The denial, revocation or suspension shall be made only upon specific charges in writing, under oath, filed with the superintendent or by the superintendent whereupon a hearing shall be had as to the reasons for any denial, revocation or suspension and a certified copy of the charges shall be served on the licensee or applicant for license not less than ten days prior to the hearing.

[C71, 73, 75, 77, 79, 81, § 533A.7]

533A.8 Written contract required.

1. Each licensee shall make a written contract between the licensee and a debtor and shall immediately and before collecting any fee, furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of creditors who are to receive payments under the contract, the total charges agreed upon for the services of the licensee, a statement of how the charges are to be paid, and the beginning and expiration date of the contract. No contract shall extend for a period longer than thirty-six months.

2. Each licensee shall maintain a separate bank trust account in which all payments received from debtors for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor. Every licensee shall keep, and use in the licensee's business, books, accounts and records which will enable the superintendent to determine whether such licensee is complying with the provisions of this chapter and with the rules and regulations of the superintendent. Every licensee shall preserve such books, accounts and records for at least seven years after making the final entry on any transaction recorded therein.

3. Each licensee shall keep complete and adequate records during the term of the contract and for a period of five years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements, and charges, which records shall be open to inspection by the superintendent and the superintendent's duly appointed agents during normal business hours.

4. Each licensee shall make remittances to creditors within forty-five days after initial receipt of funds, and thereafter remittances shall be made to creditors within thirty days of receipt, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain.

5. Each licensee shall, upon request, furnish the debtor a written statement of the debtor's account monthly or a verbal accounting at any time the debtor may request it during normal business hours. A monthly written statement of disbursements made and fees deducted from the debtor's account shall be made to the debtor, whether the debtor requests it or not.

6. A licensee shall not receive any fee unless the licensee has the consent of at least fifty percent of the total number of the creditors listed in the licensee's contract with the debtor, or such a like number of creditors have accepted a distribution of payment. The debtor shall be informed by the licensee of those creditors who have not agreed to the licensee's handling of the account. No licensee shall accept an account unless a written and thorough budget analysis has been performed which indicates that the debtor can meet the requirements determined by the budget analysis.

7. In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of such compromise.

[C71, 73, 75, 77, 79, 81, § 533A.8]

533A.9 Fee agreed in advance.

The fee of the licensee shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall be clearly stated herein. The fee of the licensee shall not exceed fifteen percent of any payment made by the debtor and distributed to the creditors pursuant to the contract. In case of total payment of the contract before the contract period has expired, the licensee shall be entitled only to a fee of no more than three percent of such final payment.

[C71, 73, 75, 77, 79, 81, § 533A.9]

90 Acts, ch 1100, §1

533A.10 Examination of licensee.

1. The superintendent may examine the condition and affairs of said licensee. In connection with any examination, the superintendent may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The superintendent shall ascertain whether the licensee transacts its business in the manner prescribed by the law and the rules and regulations issued thereunder. The licensee shall pay the cost of the examination as determined by the superintendent, which fee shall not exceed the sum of one hundred dollars per day of examination. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall automatically suspend the license until the fee is paid.

2. In the investigation of alleged violations of this chapter, the superintendent may compel the attendance of any person or the production of any books, accounts, records and files used therein, and may examine under oath all persons in attendance pursuant thereto.

The superintendent is authorized to make and promulgate as prescribed by law regulations necessary to carry out the purposes of this chapter.

[C71, 73, 75, 77, 79, 81, § 533A.10]

533A.11 Unlawful acts of licensee.

It shall be unlawful and a violation of this chapter for the holder of any license issued under the terms and provisions hereto:

1. To purchase from a creditor any obligation of a debtor.
2. To operate as a collection agent and as a licensee as to the same debtor's account without first disclosing in writing such fact to both the debtor and creditor.
3. To execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished.
4. To receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, both as to real or personal property.
5. To pay any bonus or other consideration to any individual, agency, partnership, unincorporated association or corporation for the referral of a debtor to the licensee's business, or to accept or receive any bonus,

commission or other consideration for referring any debtor to any individual, partnership, unincorporated association, agency or corporation for any reason.

6. To advertise the licensee's services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcast or televised the licensee's services in any manner inconsistent with the law.

[C71, 73, 75, 77, 79, 81, § 533A.11]

90 Acts, ch 1100, § 2

533A.12 Reserved.

533A.13 License mandatory to business.

It shall be unlawful for an individual, partnership, unincorporated association, agency or corporation to engage in the business of debt management without first obtaining a license as required by this chapter. Any individual, partnership, unincorporated association, agency, corporation or any other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent or representative thereof who shall willfully or knowingly engage in the business of debt management without the license required by this chapter, shall be guilty of a serious misdemeanor.

[C71, 73, 75, 77, 79, 81, § 533A.13]

533A.14 Fees to state treasurer.

All moneys received by the superintendent from fees, licenses and examinations pursuant to this chapter shall be deposited by the superintendent with the treasurer of state.

[C71, 73, 75, 77, 79, 81, § 533A.14]

533A.15 Judicial review.

Judicial review of actions of the superintendent pursuant to sections 533A.3 and 533A.7 may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, 77, 79, 81, § 533A.15]

2003 Acts, ch 44, §114