

533A.8 Licensee requirements.

1. A licensee shall describe the methodology of its debt management program to each potential debtor client so that the debtor can make an informed decision as to whether or not the licensee's program is an appropriate option for the debtor.

2. A licensee shall conduct a comprehensive review of a debtor's debts and monthly budget and make a determination that the licensee's program is an appropriate option for the debtor before entering into a contract with the debtor. A licensee shall not 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.

3. a. A licensee, including any third party who markets or sells a debt management program on behalf of a licensee, shall make the following disclosures to a debtor both verbally and in writing before the debtor signs a contract to enroll in the debt management program:

(1) The total estimated fee the debtor will pay for participating in the program if the debtor remains in the program for the entire term of the contract.

(2) That the licensee cannot guarantee any specific results from participation in the program.

(3) That the debtor may elect to discontinue participation in the program without penalty at any time during the program.

(4) If the program includes obtaining concessions regarding the principal amount of the debt from creditors, that any concessions may be considered income to the debtor subject to income tax.

(5) If the program is based on a model which does not require the licensee or another licensee to receive money or evidence thereof from the debtor to distribute to the debtor's creditors, the following:

(a) That payments are not made to creditors on the debtor's behalf, so the debtor is still obligated to make payments to creditors.

(b) That creditors may continue to try to collect the debtor's debts while the debtor is enrolled in the program.

(6) If the program is a debt settlement program, that the following may occur:

(a) The debtor's credit report and credit score may be harmed by participating in the program.

(b) Failure to make required minimum payments to the debtor's creditors may violate the debtor's agreement with the creditors and may result in additional charges, such as late fees, over limit fees, and penalties and creditors may raise the debtor's interest rate.

(c) The debtor may be sued by creditors if the debtor fails to make required minimum payments to the debtor's creditors.

b. The verbal disclosures required pursuant to this subsection shall be made at a normal rate of speech in a manner designed to ensure the debtor understands the disclosures. The written disclosures shall be provided in a separate document from the contract between the licensee and the debtor and shall be designed to ensure the debtor understands the disclosures. It is a violation of this chapter for a licensee, or any third party who markets or sells a debt management program on behalf of a licensee, to contradict these disclosures in any representation, advertising, or solicitation.

4. A licensee shall make a written contract with a debtor and shall immediately and before collecting any fee, furnish the debtor with a true copy of the contract. A contract shall not extend for a period longer than sixty months. The contract between a licensee and a debtor shall include all of the following:

a. The total estimated charges agreed upon for the services of the licensee and any third parties providing services for or in conjunction with the licensee.

b. A statement of how and when the charges are to be paid.

c. A statement that the debtor may elect to discontinue participation in the program without penalty at any time during the program.

d. The beginning and expiration date of the contract.

e. The name, physical address, mailing address if different from the physical address, and telephone number of the licensee.

f. A description of the services to be provided by the licensee, which shall include educational and counseling services designed to assist the debtor in managing the debtor's borrowing, spending, and saving habits.

g. If the debt management program is a debt settlement program, the following:

(1) A comprehensive list of every debt at the time of enrollment that is to be negotiated for settlement by the licensee, including the creditors' names and identifying information.

(2) The estimated amount of money needed to fund settlements.

h. If the debt management program is based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the contract shall set forth the complete list of creditors who are to receive payments under the contract.

5. If the debt management program is based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the licensee who receives the money or evidences thereof from the debtor for distribution to the debtor's creditors shall do all of the following:

a. 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.

b. 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, 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.

c. Provide each debtor a monthly written statement of disbursements made and fees deducted from the debtor's account. The licensee shall also provide a verbal accounting of disbursements made and fees deducted from the debtor's account at any time the debtor requests it during normal business hours.

d. Not receive any fee, or have or cause any fee to be received by any other licensee, other than the initiation fee permitted in section 533A.9, subsection 2, 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.

6. If the debt management program is not based on a model which requires the licensee or any licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, both of the following shall apply:

a. The debtor shall maintain full control of and access to any moneys set aside for payment to creditors.

b. The licensee may not receive consideration from any third party in connection with services rendered to a debtor.

7. A 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, any applicable state or federal laws or regulations, and the rules and regulations of the superintendent. A licensee shall preserve such books, accounts, and records for at least five years after making the final entry on any transaction recorded therein. Records shall contain complete information regarding all contracts, 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.

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

9. All licensee advertising content, and data supporting any claims made in the advertising, shall be maintained in retrievable format and available to the superintendent for inspection for a minimum of five years.

10. If the licensee maintains an internet website, the licensee shall make available on its internet website a physical address for its headquarters, a main telephone number, and an electronic mail contact address.

11. The superintendent may adopt additional requirements applicable to licensees pursuant to administrative rule.

[C71, 73, 75, 77, 79, 81, §533A.8]

2009 Acts, ch 34, §5; 2010 Acts, ch 1061, §69

Subsection 5, unnumbered paragraph 1 amended