

## CHAPTER 533A

## DEBT MANAGEMENT

Referred to in §524.211, 524.212, 524.606, 546.3, 669.14, 714E.1

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**533A.1 Definitions.**

As used in this chapter:

1. “*Creditor*” means a person who grants credit, a person who takes assignment of the rights to payments of a person who grants credit, or a person for whose benefit moneys are being collected and distributed by a licensee.

2. “*Debt management*” means, when done for a fee, any of the following:

a. Arranging or negotiating, or attempting to arrange or negotiate, the amount or terms of debt owed by a debtor to a creditor.

b. Receiving from a debtor, directly or indirectly, money or evidences thereof for the purposes of distributing the same to one or more creditors of the debtor in payment or partial payment of the debtor’s obligations.

c. Serving as an intermediary between a debtor and one or more creditors of the debtor for the purpose of obtaining concessions from the creditors.

d. Engaging in debt settlement.

3. “*Debt settlement*” means seeking to settle the amount of a debtor’s debts with creditors for less than the amounts owed on the debts.

4. “*Debtor*” means any natural person.

5. “*Donation*” means money given by the debtor to a licensee as a gift for debt management and outside of the debt management contract.

6. “*Fee*” means the moneys paid by the debtor to the licensee as payment for debt management and shall not include money paid to the licensee or held by the licensee for distribution to a creditor, a distribution to the debtor as a refund, or a donation.

7. “*Gratuitous debt-management service*” means debt management without charging a fee.

8. “*Licensee*” means any person licensed under this chapter.

9. “*Natural person*” means an individual who is not an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, other business entity, or any group of individuals or business entities, however organized.

10. “*Office*” means each location by street number, building number, city, and state where any person engages in debt management.

11. “*Person*” means an individual, an association, joint venture or joint stock company, partnership, limited partnership, business corporation, nonprofit corporation, or any other group of individuals however organized.

12. “*Superintendent*” means the superintendent of banking.

[C71, 73, 75, 77, 79, 81, §533A.1]

2006 Acts, ch 1042, §1; 2009 Acts, ch 34, §1

**533A.2 Licenses required — exceptions.**

1. A person shall not engage in the business of debt management in this state without a

license as provided for in this chapter unless exempt under subsection 2. A person engages in the business of debt management in this state if the person solicits on behalf of the person or another person to provide, or enters into a contract with one or more debtors to provide, debt management to a debtor who resides in this state.

2. The following persons, including employees of such persons, shall not be required to be licensed or to otherwise comply with the provisions of this chapter:

a. A licensed attorney admitted to practice in this state acting solely as an incident to the practice of law.

b. Banks, federally chartered savings and loan associations, credit unions, mortgage bankers and mortgage brokers licensed or registered under chapter 535B, 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, while performing services for the employee's licensed employer.

e. Judicial officers or others acting under court orders.

f. Nonprofit religious, fraternal, or cooperative organizations offering to debtors gratuitous debt-management service.

g. Those persons whose principal business is the origination of first mortgage loans on real estate for their own portfolios or for sale to institutional investors.

h. A person licensed under chapter 533C, including that person's authorized delegates as defined in section 533C.102, or a person exempt from licensing under section 533C.103, when engaging in money transmission or currency exchange as defined in section 533C.102.

3. The application for a license shall be in the form prescribed by the superintendent. If the applicant is not a natural person, a copy of the legal documents creating the applicant shall be filed with the application. The application shall contain all of the following:

a. The name of the applicant.

b. If the applicant is not a natural person, the type of business entity of the applicant and the date the entity was organized.

c. If the applicant is a foreign corporation, both of the following:

(1) An irrevocable consent, duly acknowledged, that suits and actions may be commenced against the licensee in the courts of this state by service of process performed as provided in section 617.3 or as provided in the Iowa rules of civil procedure.

(2) Proof of authorization to do business in this state.

d. The address where the business is to be conducted, including information as to any branch office of the applicant.

e. The name and resident address of the applicant's owner or partners, or, if a corporation, association, or agency, of the members, shareholders, directors, trustees, principal officers, managers, and agents.

f. The name, physical address, and telephone number of the licensee's agent for service of process.

g. Other pertinent information as the superintendent may require, including a credit report.

4. Each application shall be accompanied by a bond to be approved by the superintendent in favor of the people of the state of Iowa in the penal sum of twenty-five thousand dollars for each office, 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 the cancellation. A person shall not engage in the business of debt

management until a good and sufficient bond is filed in accordance with the provisions of this chapter.

5. Each applicant shall furnish with the application a description of its proposed debt management program, a copy of the disclosures it will be providing debtors pursuant to section 533A.8, subsection 3, and a copy of the contract the applicant proposes to use between the applicant and the debtor pursuant to section 533A.8, subsection 4.

6. At the time of making the application the applicant shall pay to the superintendent the sum of two hundred 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; 2006 Acts, ch 1042, §2; 2007 Acts, ch 126, §92; 2008 Acts, ch 1160, §9; 2009 Acts, ch 34, §2 - 4; 2009 Acts, ch 179, §41; 2012 Acts, ch 1017, §131

Referred to in §533C.103

[T] Subsection 2, paragraph b amended

### **533A.3 Investigation.**

1. Upon the filing of each application and the payment of the fees, the superintendent shall conduct an investigation of the facts concerning the application and the requirements provided in subsection 3.

2. The superintendent shall grant or deny each application for a license within sixty days from the date that the application and the required fee are filed and paid, unless the period is extended by written agreement between the applicant and the superintendent.

3. a. The superintendent shall enter an order granting the application, and issue and deliver a license to the applicant if the superintendent finds that both of the following are satisfied:

(1) The experience, financial responsibility, character, and general fitness of the applicant is sufficient 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.

(2) The applicant has not been convicted of or pled guilty to a felony or an indictable misdemeanor for financial gain, or has not had a record of having defaulted in payment of money collected for others, including the discharge of such debts through bankruptcy proceedings.

b. If the applicant is not a natural person, this subsection shall apply to the owners, partners, members, shareholders, officers, directors, and managers of the applicant.

4. If the applicant has, at the time of the application, a license for an office located within ten miles of the location of the office named in the application, a license shall not be issued unless the superintendent finds that public convenience will be served by the issuance of the license.

5. A license shall not be transferable or assignable.

6. If the superintendent finds the applicant not qualified under subsection 3, the superintendent shall enter an order denying the application and 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 deliver a copy to the applicant.

[C71, 73, 75, 77, 79, 81, §533A.3]

2006 Acts, ch 1042, §3

Referred to in §533A.15

### **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.**

1. To continue in the business of debt management, each licensee shall annually apply on or before June 1 to the superintendent for renewal of its license. The superintendent may

assess a late fee of ten dollars per day for applications submitted and accepted for processing after June 1.

2. The renewal application shall be on the form prescribed by the superintendent and shall be accompanied by a fee of two hundred fifty dollars. A separate renewal application shall be made for each office maintained by the applicant.

[C71, 73, 75, 77, 79, 81, §533A.5]

2006 Acts, ch 1042, §4; 2007 Acts, ch 126, §93

**533A.5A Change in control — name or address.**

1. The prior written approval of the superintendent is required whenever a change in the control of a licensee is proposed. For purposes of this section, “control” in the case of a corporation means direct or indirect ownership, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. “Control” in the case of any other entity means the principals of the organization whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. When requesting approval, the person shall submit a fee of one hundred dollars to the superintendent.

2. A licensee shall notify the superintendent and submit a fee of twenty-five dollars per license to the superintendent thirty days in advance of the effective date of any of the following:

a. A change in the name of the licensee.

b. A change in the address where the business is conducted.

2006 Acts, ch 1042, §5

**533A.6 Appointment of process agent.** Repealed by 2009 Acts, ch 34, § 9. See § 533A.2(3).

**533A.7 Disciplinary action.**

1. The superintendent may, after notice and hearing pursuant to chapter 17A, take disciplinary action against a licensee if the superintendent finds any of the following:

a. The licensee, or an owner, partner, member, shareholder, officer, director, or manager of the licensee, has been convicted of a felony or of an indictable misdemeanor for financial gain.

b. The licensee, or an owner, partner, member, shareholder, officer, director, or manager of the licensee, has violated any of the provisions of this chapter or any other state or federal law, rule, or regulation applicable to the conduct of its business.

c. The licensee, or an owner, partner, member, shareholder, officer, director, or manager of the licensee, has engaged in fraud or deceit in procuring the issuance of a license or renewal under this chapter.

d. The licensee, or an owner, partner, member, shareholder, officer, director, or manager of the licensee, has engaged in unfair conduct.

e. The licensee is insolvent, or has filed for bankruptcy, receivership, or assignment for the benefit of creditors.

f. The licensee fails to post the bond required by the provisions of this chapter or the superintendent receives notice that the required bond has been canceled.

2. The superintendent may impose one or more of the following disciplinary actions against a licensee:

a. Revoke a license.

b. Suspend a license until further order of the superintendent for a specified period of time.

c. Impose a period of probation under specified conditions.

d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.

e. Issue a citation and warning respecting licensee behavior.

f. Order the licensee to pay restitution.

3. The superintendent may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

4. Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

5. A licensee may surrender a license by delivering to the superintendent written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

6. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a debtor.

[C71, 73, 75, 77, 79, 81, §533A.7]

2006 Acts, ch 1042, §6; 2008 Acts, ch 1160, §10

Referred to in §533A.15

### **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

Referred to in §533A.2, 533A.11

#### **533A.9 Fee agreed in advance.**

1. The fee of a licensee charged to a debtor shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation shall also be clearly stated in the contract.

2. A debtor may be charged a one-time initiation fee for debt management services, which shall not exceed fifty dollars.

3. If a debt management program is based on a model that required the licensee or any other licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, the debtor may not be charged a fee exceeding the initiation fee permitted in subsection 2 plus a fee not to exceed fifteen percent of amounts actually applied to the debtor's accounts with the creditors. Other than the initiation fee, the debtor shall at no time be required to pay fees exceeding fifteen percent of amounts actually applied to the debtor's accounts with the creditors.

4. If a debt management program is not based on a model that requires the licensee or another licensee to receive money or evidences thereof from the debtor to distribute to the debtor's creditors, a debtor may not be charged a fee exceeding the sum of the following:

a. The initiation fee permitted in subsection 2.

b. An additional fee not to exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program. The additional fee shall not be collected pursuant to a method other than the percent of total debt method or the percent of savings method, as provided in subparagraphs (1) and (2), respectively.

(1) The percent of total debt method involves the additional fee being collected in equal monthly installments payable over the first two-thirds of the term of the contract between the debtor and the licensee. The debtor may elect to discontinue participation at any time during the program by providing written notice to the licensee at the address specified in the contract. Notice of discontinuance, if given by mail, is effective when deposited in the mail properly addressed with postage paid. If the debtor discontinues participation in the program, no future installments are due after the mailing of the notice. If participation is discontinued within the first twelve months of the contract, the licensee may retain only fifty percent of the installments it is scheduled to receive through the date the debtor gives the discontinuation notice and shall refund the excess to the debtor. Notwithstanding the foregoing, the licensee may collect a pro rata portion of the total fee upon completion of a settlement of a debtor's debt. The pro rata portion shall be calculated by multiplying the total dollar amount of the

contracted additional fee by the percentage of debt settled of the original amount of debt enrolled in the program. In no event shall the additional fee exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program.

(2) The percent of savings method involves the additional fee being collected in monthly installments of fifty dollars per month, and the monthly fees collected shall be credited against any fees the licensee earns as the result of settlements. The debtor may elect to discontinue participation at any time during the program by providing written notice to the licensee at the address specified in the contract. Notice of discontinuance, if given by mail, is effective when deposited in the mail properly addressed with postage paid. If the debtor discontinues participation in the program, no future installments are due after the mailing of the notice. If participation is discontinued within the first twelve months of the contract, the licensee may retain only fifty percent of the installments it is scheduled to receive through the date the debtor gives the discontinuation notice and shall refund the excess to the debtor. Notwithstanding the foregoing, the licensee may collect a pro rata portion of the total fee upon completion of a settlement of a debtor's debt. The pro rata portion, which may be collected at the time of settlement, shall be calculated by multiplying the contracted savings percentage, not to exceed thirty percent, by the amount saved on settled debt. The amount saved on settled debt is the difference between the balance of that debt upon enrollment in the program and the amount settled. In no event shall the additional fee exceed eighteen percent of the total amount of the debtor's debts enrolled in the licensee's program at the time the debtor enrolled in the program.

5. Any services provided by a third party, other than the debtor's own banking fees, including lead generating, marketing, and selling services, shall be paid for by the licensee. Under no circumstances shall a debtor be required to pay a fee to a third party to obtain a licensee's services.

[C71, 73, 75, 77, 79, 81, §533A.9]

90 Acts, ch 1100, §1; 2006 Acts, ch 1042, §7; 2009 Acts, ch 34, §6

Referred to in §533A.8

#### **533A.9A Donations.**

A donation shall not be charged to a debtor or creditor, deducted from a payment to a creditor, deducted from the debtor's account, or deducted from payments made to the licensee pursuant to the debt management contract. If a licensee requests a donation from a debtor, the licensee must clearly indicate that any donation is voluntary and not a condition or requirement for providing debt management.

2006 Acts, ch 1042, §8; 2007 Acts, ch 126, §94

#### **533A.10 Examination of licensee — records.**

1. The superintendent may examine the condition and affairs of a 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 applicable rules. The licensee shall pay the cost of the examination as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of the administrative expenses in the operation of the banking division attributable to the finance bureau, as determined by the superintendent, incurred in the discharge of duties imposed upon the superintendent by this chapter. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall subject the licensee to a late fee of up to five percent per day of the amount of the examination fee for each day the payment is delinquent.

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, and may examine under oath all persons in attendance.

3. Except as otherwise provided by this chapter, all papers, documents, examination



reports and other writings relating to the supervision of licensees are not public records and are not subject to disclosure under chapter 22. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information as long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent and may provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

[C71, 73, 75, 77, 79, 81, §533A.10]

2006 Acts, ch 1042, §9; 2007 Acts, ch 170, §4

### **533A.11 Unlawful acts of licensee.**

It is unlawful and a violation of this chapter for the holder of any license issued under this chapter:

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.
7. To make, or facilitate the debtor in making, any false or misleading claim regarding a creditor's right to collect a debt.
8. To dispute, or facilitate the debtor in disputing, the validity of a debt absent a good faith belief by the debtor that the debt is not validly owing.
9. To challenge a debt without the written consent of the debtor.
10. To provide or offer to provide legal advice or legal services, including but not limited to the negotiation of payments or the settlement of a debtor's delinquent account that is subject to pending litigation, unless the person providing or offering to provide legal advice is licensed to practice law in the state in which the debtor resides.
11. To execute a power of attorney or any other written agreement that extinguishes or limits the debtor's right to contact or communicate with any creditor.
12. To take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable.
13. To induce or attempt to induce a debtor to enter into a contract which does not comply in all respects with the requirements of this chapter.
14. Where applicable, to make any statements, or allow a third party marketing or selling the licensee's program to make any statements, in the course of advertising or solicitation that contradicts the disclosures required by section 533A.8.
15. When the licensee's program is a debt settlement program, the following:
  - a. To advise a debtor to stop making payments to creditors.
  - b. To lead a debtor to believe that a payment to a creditor is in settlement of a debt to the

creditor unless the creditor provides a written certification or confirmation that the payment is in full settlement of the debt, or is part of a payment plan that is in full settlement of the debt.

c. To make any of the following representations:

(1) The licensee will furnish money to pay bills or prevent attachments.

(2) Payment of a certain amount will guarantee satisfaction of a certain amount or range of indebtedness.

(3) Participation in a program will prevent debt collection calls, litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.

(4) Participation in a program will not harm the debtor's credit report or credit score.

(5) Participation in a program will prevent the debtor from having to declare bankruptcy.

(6) That the licensee is authorized or competent to furnish legal advice or perform legal services, including but not limited to the negotiation of payments or the settlement of a debtor's delinquent account that is subject to pending litigation.

(7) That the licensee's negotiations with creditors will result in the elimination of adverse information on the debtor's credit report.

[C71, 73, 75, 77, 79, 81, §533A.11]

90 Acts, ch 1100, §2; 2009 Acts, ch 34, §7

#### **533A.12 Rules.**

The superintendent may adopt administrative rules pursuant to chapter 17A to administer and enforce the provisions of this chapter.

2006 Acts, ch 1042, §10

#### **533A.13 License mandatory to business.**

It shall be unlawful for a person to engage in the business of debt management without first obtaining a license as required by this chapter. Any person 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]

2006 Acts, ch 1042, §11

#### **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 for deposit in the department of commerce revolving fund created in section 546.12.

[C71, 73, 75, 77, 79, 81, §533A.14]

2009 Acts, ch 181, §105

#### **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

#### **533A.16 Violations — injunctions — civil penalties.**

1. If the superintendent believes that a person has engaged in, or is about to engage in, an act or practice that constitutes or will constitute a violation of this chapter, the superintendent may apply to the district court for an order enjoining such act or practice. Upon a showing by the superintendent that such person has engaged, or is about to engage, in any such act or practice, the district court shall grant an injunction.

2. The superintendent may investigate or initiate complaints against persons who are not licensed under this chapter to determine whether the person is violating this chapter.

3. In addition to or as an alternative to applying to the district court for an injunction, the superintendent may issue an order to a person who is not licensed under this chapter to

require compliance with this chapter, may impose a civil penalty against such person for any violation of this chapter in an amount up to five thousand dollars for each violation, and may order the person to pay restitution.

4. Before issuing an order under this section, the superintendent shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for in disciplinary proceedings involving a licensee under this chapter.

5. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.

6. An action to enforce an order under this section may be joined with an action for an injunction.

2008 Acts, ch 1160, §11

**533A.17 Waiver not allowed.**

A waiver by a debtor of the provisions of this chapter is void and unenforceable as contrary to public policy. An attempt by a licensee to induce a debtor to waive the debtor's rights is a violation of this chapter.

2009 Acts, ch 34, §8