

CHAPTER 20
DEBT MANAGEMENT

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

187—20.1(17A,533A) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 533A shall apply. In addition, unless the context otherwise requires:

“Debt management business” means a person that performs debt management as defined in Iowa Code section 533A.1(2) or debt settlement as defined in Iowa Code section 533A.1(3).

“Nationwide multistate licensing system” or *“NMLS”* means a multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of nondepository financial institutions.

“Upon completion of a settlement of a debtor’s debt” means when all of the payments necessary to completely satisfy a debtor’s debt have been remitted to the creditor.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.2(17A,533A) Utilization of the NMLS. All application and licensing information shall be submitted through the NMLS including but not limited to the following: original application information; changes in application information; license renewal information; changes in name, location, and control; and notices of significant events. The applicant or licensee shall pay any fees required by the NMLS including but not limited to the following: system processing fees, background check fees, and credit background check fees.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.3(17A,533A) Application for license.

20.3(1) An application for a license to operate a debt management business in Iowa shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS. The superintendent may consider an application withdrawn if it does not contain all of the information required and the missing information is not submitted to the superintendent within 30 days after the superintendent requests the missing information. The applicant may also request that the application be withdrawn at any time before the superintendent has decided to grant or deny the application.

20.3(2) Each officer, director, and individual who has control of an applicant must provide fingerprints, authorize a fingerprint background check through the NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation.

20.3(3) The applicant shall submit with the application an application fee of \$100 and an initial license fee of \$250. The superintendent shall refund the initial license fee if the application is denied, but the application fee is not subject to refund.

20.3(4) If any information material to the application changes after the applicant files the initial application, the applicant shall provide updated information to the superintendent within ten days of the change. When such a material change in information has occurred, the superintendent may deny an application if the applicant fails to provide updated information within the prescribed time frame.

20.3(5) An applicant for a license to operate a debt management business must file with the superintendent a \$25,000 surety bond in compliance with the provisions of Iowa Code section 533A.2(4).

20.3(6) Licenses expire on the next December 31 after they are issued, but licenses granted on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a license granted on November 17, 2017, would not expire until December 31, 2018.

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187—20.4(17A,533A) Grounds for approval or denial.

20.4(1) The superintendent shall approve or deny a license application in accordance with the provisions of Iowa Code section 533A.3.

20.4(2) The following may be considered evidence that the business of the applicant may not be operated lawfully and honestly consistent with the purposes of Iowa Code chapter 533A and may therefore be considered grounds for denial of an application:

a. An applicant, or an officer, director, or individual who has control of an applicant, has had a mortgage loan originator license or any lending license revoked in any governmental jurisdiction.

b. An applicant, or an officer, director, or individual who has control of an applicant, has been convicted of, or pled guilty or no contest to, a felony in a domestic, foreign, or military court if such felony involved an act of fraud, dishonesty, or breach of trust, or money laundering.

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187—20.5(17A,533A) Renewal of license.

20.5(1) To remain authorized to operate a debt management business, a licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before the expiration date is not authorized to operate a debt management business in Iowa after the expiration date.

20.5(2) An application to renew a license shall be submitted to the superintendent, on the form provided and with the information requested, through the NMLS by December 1 of the year of expiration. For example, for a license that will expire on December 31, 2017, an application for renewal shall be submitted by December 1, 2017. All requested information, including any material change to information contained in the original application, shall be provided to the superintendent. The superintendent may assess late fees of up to \$10 per day for applications submitted and accepted for processing after December 1.

20.5(3) The superintendent shall grant an application to renew a license if:

a. The licensee submits the application and the appropriate renewal fee by December 1 or the licensee submits the application after December 1 but before January 1 and pays the appropriate renewal fee and the appropriate late fee;

b. The application is fully completed and includes all necessary information; and

c. The application does not reveal grounds to deny a license.

20.5(4) It is within the discretion of the superintendent to reject for processing a renewal application submitted after December 31 or to treat such an application as an application for a new license. A licensee who fails to renew a license before the expiration date is not authorized to operate a debt management business in Iowa after the expiration date.

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187—20.6(17A,533A) Changes in the licensee's name, location, or control.

20.6(1) A licensee wishing to change the name or location of a debt management business shall notify the superintendent at least 30 days prior to the requested change. The request shall include proof that the licensee has either obtained a new bond or amended the existing bond to reflect the new name or location. The licensee shall submit a \$25 fee per license in conjunction with the request. A licensee may not operate a debt management business under a different name without providing such notice and submitting the required fee.

20.6(2) A licensee wishing to establish a branch office must submit the application to the superintendent, on the form provided and with the information requested, through the NMLS, along with a fee of \$250. Licenses issued to branch offices are treated as independent licenses and are subject to the renewal requirements, fees, and procedures specified in rule 187—20.5(17A,533A).

20.6(3) When change in control of a licensee is proposed, the party that will assume control of the licensee shall give notice to the superintendent at least 60 days before the proposed change will take effect. Change in control is defined in Iowa Code section 533A.5A. The party that will assume control of the licensee shall furnish the superintendent with the same information required of initial applicants for a license, along with a fee of \$100. The party that will assume control may be required to provide fingerprints, authorize a fingerprint background check through the NMLS, and pay the appropriate fees for the purpose of conducting a national criminal history background check through the Federal Bureau of Investigation. The superintendent shall approve or deny the request in accordance with the provisions of Iowa Code section 533A.3.

20.6(4) Failure to notify the superintendent within the prescribed time as required by this rule may subject the licensee to disciplinary action.

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187—20.7(17A,533A) Notice of significant events. A licensee shall notify the superintendent immediately and in writing within ten days of the occurrence of any of the following events.

20.7(1) The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection or commence reorganization proceedings.

20.7(2) A prosecuting authority files criminal charges against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

20.7(3) Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

20.7(4) The attorney general of Iowa, the Federal Trade Commission, or the enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce the consumer protection laws against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

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187—20.8(17A,533A) Administrative fees.

20.8(1) *Examination or investigation fees.* A licensee shall pay an investigation or examination fee as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division, as described in Iowa Code section 533A.10(1).

20.8(2) *Late fees for failing to respond.* In the process of administering this chapter, the superintendent may require a person to provide responses to formal orders, examinations, or complaint inquiries. If a person fails to respond within 30 days of the request, the superintendent may assess a penalty of \$10 per day after the initial 30 days.

20.8(3) *NMLS system processing fees.* In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS attributed to the licensee's record in the NMLS including but not limited to the initial set-up fee and annual processing fee.

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187—20.9(17A,533A) Licensee records.

20.9(1) *General record requirements.* A licensee must keep records that allow the superintendent to determine the licensee's compliance with relevant statutes and regulations.

a. The licensee may keep the records as a hard copy or in an electronic equivalent.

b. The licensee shall keep records for at least 36 months from the date of the final transaction with the debtor.

c. The licensee shall maintain all books and records in good order and shall produce books and records for the superintendent upon request. Failure to produce such books and records within 30 days of the superintendent's request may be grounds for disciplinary action against the licensee.

d. The obligation to maintain records continues even after the licensee ceases business operations in Iowa and turns in or surrenders its license. The owners and directors of the licensee are responsible for ensuring that this requirement is met.

20.9(2) *Required records.* A licensee operating a debt management business shall keep, at its principal place of business, an index, a client log, an account file, and an account ledger.

20.9(3) *Index.* All records kept by a debt management business shall be accessible by the debtor's name and account number.

20.9(4) *Client log.* The client log is a chronological list of active and inactive clients. The client log shall include the name of the client, the account number, the date the account was opened, the date the account was closed, and the expiration date of the account.

20.9(5) *Account file.* The account file consists of the application, the licensee's comprehensive review of the debtor's debts and monthly budget as required by Iowa Code section 533A.8(2), a copy of the debt management contract, and all disclosures to the debtor required by Iowa Code section 533A.8(3).

20.9(6) *Account ledger.* A licensed debt management business whose 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 shall maintain an account ledger for each debtor, which shall show:

a. The name and address of the debtor, the account number, the amount of the debtor's outstanding debts, and the total of payments the debtor has made to the licensee.

b. A transaction history that lists all transactions with the debtor and the debtor's creditors. Payments from the debtor shall be posted to the account ledger, effective the date the payments were received, and shall show the date payment was received and the total amount of the payment. Payments to the debtor's creditors made from the debtor's account shall be posted to the account ledger effective the date the payments were made. The account ledger shall show the date the payment was made, the total amount of the payment, and a description of how the payment was applied to the debtor's account. Fees that the licensee deducts from the debtor's account shall be posted to the account ledger effective the date the fees were collected, and the account ledger shall show the date the fees were collected and the total amount of fees collected. Other transactions shall be fully described. Corrections to the transaction history shall be made by corrective entry and not by erasure.

20.9(7) *General business records.* A licensee must keep the following general business records for at least 36 months:

a. All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and canceled checks (or copies thereof) relating to the debt management business of the licensee.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each applicant for debt management or debt settlement, including a record of the date and amount of all such payments actually made by each applicant.

c. Copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors, and others compensated by a licensee in connection with the conduct of the debt management business.

d. All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 533A.

e. Copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar functions performed by any third party, including but not limited to the superintendent or any other regulatory or supervisory authority.

f. Copies of all advertisements and solicitations concerning debt management or debt settlement directed at Iowa residents, including advertisements and solicitations on the Internet or by other electronic means, in the format (e.g., recorded sound, video, print) in which the advertisements and solicitations were published or distributed.

20.9(8) *Disposal of records.* If a licensee or former licensee disposes of records at the end of the retention period, the licensee or former licensee shall dispose of the records in a reasonable manner that safeguards any identification information, as defined in Iowa Code section 715A.8(1)"a." The owners and directors of licensees and former licensees are responsible for ensuring that this requirement is met.

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187—20.10(17A,533A) Complaints and investigations.

20.10(1) The superintendent may, at any time and as often as the superintendent deems necessary, investigate a licensee and examine the licensee's books, accounts, records, and files.

20.10(2) The superintendent may investigate complaints about, or alleged violations by, any licensee.

20.10(3) The following shall constitute a complaint or alleged violation:

a. A written complaint received from a consumer, member of the public, employee, business affiliate, or governmental agency.

b. Notice to the superintendent from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the superintendent from any source that the licensee has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other similar

offense, in a court of competent jurisdiction in this state or in any other state, territory, or district of the United States, or in any foreign jurisdiction.

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187—20.11(17A,533A) Disciplinary action.

20.11(1) The superintendent has authority pursuant to Iowa Code chapters 533A and 17A to impose discipline for violations of Iowa Code chapter 533A and the rules promulgated thereunder.

20.11(2) Grounds for discipline. The superintendent may impose any of the disciplinary sanctions set out in Iowa Code section 533A.7(2) when the superintendent finds any of the following:

a. The licensee has violated a provision of Iowa Code chapter 533A or a rule adopted under Iowa Code chapter 533A or any other state or federal law applicable to the conduct of the licensee's business.

b. A fact or condition exists which, had it existed at the time of the licensee's original application for a license, would have warranted the superintendent to refuse to issue the original license.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

d. The licensee has violated an order of the superintendent.

e. The licensee fails to fully cooperate with an examination or investigation, including failing to respond to an inquiry from the superintendent within 30 days of the date the superintendent mails a written communication directed to the licensee's last-known address on file with the superintendent.

f. The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the superintendent.

g. The licensee continues to operate a debt management business without an active and current license.

h. The licensee operates a debt management business in the same location as another business without the superintendent's written approval.

i. The licensee has abandoned its place of business for 60 or more days.

j. The licensee fails to notify the superintendent within ten days of the occurrence of one of the significant events set forth in rule 187—20.7(17A,533A).

k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to operate a debt management business under the other state's or jurisdiction's law.

l. The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

m. The licensee fails to notify the superintendent of a change in ownership, name, or principal place of business.

n. The licensee fails to pay a license fee required by Iowa Code chapter 533A or to maintain a bond required by Iowa Code chapter 533A.

20.11(3) The superintendent shall not refund a license fee, in whole or in part, for a license that has been suspended, revoked, or surrendered.

[ARC 4061C, IAB 10/10/18, effective 11/14/18]

187—20.12 Reserved.

187—20.13(17A,533A) Restrictions on operating a debt management business. A licensee shall adhere to the following restrictions related to operating a debt management business.

20.13(1) Licensees shall not engage in any of the acts prohibited by Iowa Code section 533A.11.

20.13(2) Licensees may not establish branch locations outside the United States.

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These rules are intended to implement Iowa Code chapter 533A.

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