

380.040 Persons engaged in debt adjusting -- Powers and prohibitions -- Requirements for registration, audits, insurance, and bond or letter of credit -- Increase in amount of bond or insurance when debt is primarily for personal use.

- (1) Subject to subsection (3) of this section, a person, whether or not located in this state, who is engaged in debt adjusting and actually or constructively receives any money or other thing of value, other than the fees permitted by this chapter, for the purpose of disbursing the money or thing of value to the debtor's creditors, shall do both of the following:
 - (a) Unless specifically instructed otherwise by a debtor, disburse to the appropriate creditors all funds received from the debtor, less any contributions or fees not prohibited by subsection (2) of this section, within thirty (30) days of receipt of the funds from the debtor; and
 - (b) Maintain a separate trust account for the receipt of any funds from debtors and the disbursement of the funds to creditors on behalf of the debtors.
- (2) If a fee, contribution, or other consideration for engaging in debt adjusting is accepted, directly or indirectly, a person engaged in debt adjusting shall not do any of the following:
 - (a) Accept a fee, contribution, or other consideration exceeding seventy-five dollars (\$75) from a debtor residing in this state for an initial set up;
 - (b) Accept a fee, contribution, or other consideration exceeding fifty dollars (\$50) per calendar year from a debtor residing in this state for consultation;
 - (c) If money or anything else of value is received and held by the person engaged in debt adjusting for the purpose of disbursing the money or thing of value to the debtor's unsecured creditors, accept a periodic fee, contribution, or other consideration from a debtor who resides in this state that exceeds the greater of eight and one-half percent (8.5%) of the amount paid by the debtor each month for distribution to the debtor's creditors or thirty dollars (\$30); or
 - (d) Accept any other fee, contribution, or other consideration in advance of the complete performance of all promised services in relation to secured debt. Acceptance of a fee, contribution, or other consideration in advance of the complete performance of all promised services in relation to secured debt, including the placement of the fee, contribution, or other consideration into an escrow account to be paid upon completion of the services, is specifically prohibited. For purposes of this paragraph, "secured debt" means any debt primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property.
- (3) Subsections (1) and (2) of this section shall not prohibit a person engaged in debt adjusting for a debtor who resides in this state from charging the debtor a bad check charge of twenty dollars (\$20) or the amount passed on from the debt adjuster's bank, whichever is greater, in addition to fees, contributions, or other consideration

not prohibited by subsection (2) of this section.

- (4) Fees, contributions, or other consideration permitted in subsections (1), (2), and (3) of this section may be adjusted on an annual basis by the amount equivalent to any increase in the consumer price index, published by the United States Department of Labor, Bureau of Labor Statistics.
- (5) Any person that engages in debt adjusting shall file an initial registration form, accompanied by an initial registration fee of two hundred fifty dollars (\$250), and the registration shall be renewed each year thereafter for a fee of two hundred fifty dollars (\$250) to cover the actual cost of filing the registration, in accordance with administrative regulations promulgated by the Attorney General.
- (6) Any person that engages in debt adjusting shall arrange for and undergo an annual audit of the person's business, including any trust funds deposited and distributed to creditors on behalf of debtors, which shall be conducted by an independent, third-party certified public accountant. Both of the following shall apply to an audit performed under this subsection:
 - (a) The person shall file the results of the audit and the auditor's opinion with the Consumer Protection Division of the Office of the Attorney General within thirty (30) days of the anniversary date of filing the initial registration; and
 - (b) The Attorney General shall make available a summary of the results of the audit and the auditor's opinion upon written request of any person and payment of a fee not to exceed the cost of copying the summary and opinion.
- (7)
 - (a) A person engaged in debt adjusting shall obtain and at all times maintain insurance coverage for errors and omissions, employee dishonesty, depositor's forgery, computer fraud, and violations of this chapter in the amount of ten percent (10%) of the monthly average for the immediately preceding six (6) months of the aggregate amount of all deposits made with the person by all debtors. The insurance coverage shall comply with all of the following:
 1. The minimum limit of the insurance coverage shall not be less than one hundred thousand dollars (\$100,000), and the maximum limit of the insurance coverage shall not be more than two hundred fifty thousand dollars (\$250,000);
 2. The insurance coverage shall not include a deductible in excess of ten percent (10%) of the face amount of the policy coverage;
 3. The insurance coverage shall be issued by an insurer and rated at least A-, or its equivalent, by a nationally recognized rating organization; and
 4. The insurance coverage shall provide that the Consumer Protection Division of the Office of the Attorney General shall be named as an additional interested party.
 - (b) If the debt adjuster engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property, the amount of insurance coverage required in paragraph (a) of this

subsection shall be increased by two hundred fifty thousand dollars (\$250,000).

- (8)
 - (a) A debt adjuster shall maintain a bond issued by a surety company admitted to do business in this Commonwealth. The bond shall be in the amount of twenty-five thousand dollars (\$25,000) in favor of the Attorney General for the benefit of the Commonwealth for any violation of this chapter or any person suffering injury or loss by reason of any violation of this chapter. A copy of the bond shall be filed with the Attorney General.
 - (b) The bond required by paragraph (a) of this subsection shall be in effect during the period of the debt adjuster's registration as well as for two (2) years after the debt adjuster ceases to provide debt-adjusting services to debtors.
 - (c) A change in ownership of a debt adjuster shall not release, cancel, or terminate liability under any bond previously filed unless the Attorney General agrees in writing to the release, cancellation, or termination because the debt adjuster has filed a new bond meeting the requirements of paragraph (a) of this subsection.
 - (d) The proceeds of the bond required by paragraph (a) of this subsection shall be paid to any person suffering injury or loss by reason of any violation of this chapter or to the Attorney General for any violation of this chapter or shall be paid pursuant to the terms of any order of a court of competent jurisdiction. Any person who is damaged by any violation of this chapter may bring an action against the bond to recover damages pursuant to this paragraph, provided the aggregate liability of the surety shall not exceed the amount of the bond.
 - (e) In lieu of the bond required by paragraph (a) of this subsection, a debt adjuster may, with the written approval of the Attorney General, deliver to the Attorney General an irrevocable letter of credit issued or confirmed by a financial institution authorized by law to transact business in the Commonwealth. The irrevocable letter of credit shall be in the amount of twenty-five thousand dollars (\$25,000) in favor of the Attorney General for the benefit of the Commonwealth or any person suffering injury or loss by reason of any violation of this chapter.
 - (f) If the debt adjuster engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property, the amount of the bond required in paragraph (a) of this subsection or the irrevocable letter of credit approved pursuant to paragraph (e) of this subsection shall be increased by fifty thousand dollars (\$50,000).
- (9) A debt adjuster may not, directly or indirectly:
 - (a) Misappropriate or misapply money held in trust;
 - (b) Settle a debtor's debt if the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to

settlement unless, after the creditor has assented, the debtor assents to a settlement for which the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement;

- (c) Take a power of attorney that authorizes the debt adjuster to settle a debt, unless the power of attorney is expressly limited to the debtor's debts and grants authority to settle debts only if the amount the debtor will owe after settlement is less than fifty percent (50%) of the amount of the debt prior to settlement. However, in no event shall an agreement confer on a debt adjuster a power of attorney to negotiate or settle any of the debtor's debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property;
- (d) Exercise or attempt to exercise a power of attorney after a debtor has terminated an agreement;
- (e) Initiate a transfer from a debtor's account at a bank or with another person unless the transfer is:
 - 1. A return of money to the debtor; or
 - 2. Before termination of an agreement, properly authorized by the agreement and this chapter, and for payment to one (1) or more creditors pursuant to a plan or payment of a fee;
- (f) Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;
- (g) Settle a debt or lead a debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the debtor receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that upon completion will lead to full settlement of the debt;
- (h) Make a representation that:
 - 1. The debt adjuster will furnish money to pay bills or prevent attachments;
 - 2. Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness;
 - 3. Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment, and will or may stop efforts to collect a debt from the debtor;
 - 4. Failure to make required minimum payments to creditors will not or may not break the terms of agreements with creditors, will not or may not lead creditors to increase finance charges and pursue litigation, will not or may not be reported to consumer reporting agencies, or will not or may not have an adverse effect on the debtor's credit report and credit

score; or

5. Fees paid to a debt adjuster will be used to pay creditors;
 - (i) Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;
 - (j) Take a confession of judgment or power of attorney to confess judgment against a debtor;
 - (k) Purchase a debt or obligation of the debtor;
 - (l) Receive from or on behalf of the debtor:
 1. A promissory note or other negotiable instrument other than a check or a demand draft; or
 2. A postdated check or demand draft;
 - (m) Lend money or provide credit to the debtor, except as a deferral of a settlement fee at no additional expense to the debtor;
 - (n) Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor;
 - (o) Provide the debtor less than the full benefit of a compromise of a debt arranged by the debt adjuster; or
 - (p) Charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt adjusting services or educational services concerning personal finance.
- (10) Any unfair, false, misleading, or deceptive act or practice in the conduct of debt adjusting is prohibited. For purposes of this subsection, "unfair" shall be construed to mean unconscionable.

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