

380.100 Agreement for debt adjusting -- Contents -- Right to confer power of attorney upon debt adjuster -- Prohibited provisions.

- (1) An agreement for debt adjusting shall:
 - (a) Be in writing;
 - (b) Be dated and signed by the debt adjuster and the debtor;
 - (c) Include the name of the debtor and the address where the debtor resides;
 - (d) Include the name, business address, and telephone number of the debt adjuster;
 - (e) Be delivered to the debtor immediately upon formation of the agreement. Delivery of an electronic record occurs when the agreement is made available in a format in which the debtor may retrieve, save, and print the agreement and the debtor is notified that the electronic record is available;
 - (f) Disclose:
 1. The services to be provided;
 2. The amount, or method of determining the amount, of all fees, individually itemized, to be paid by the debtor;
 3. The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;
 4. Whether a plan provides for regular periodic payments to creditors and, if a plan provides for regular periodic payments to creditors:
 - a. Each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the debt adjuster reasonably believes each creditor will offer; and
 - b. The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;
 5. Each creditor that the debt adjuster believes will not participate in the plan and to which the debt adjuster will not direct payment;
 6. That the debt adjuster may terminate the agreement for good cause, upon return of unexpended money of the debtor;
 7. That the debtor may cancel the agreement as provided in KRS 380.060;
 8. That the debtor may contact the Attorney General with any questions or complaints regarding the debt adjuster;
 9. The address, telephone number, and Internet address or Web site of the Attorney General;
 10. That participation in a plan may not prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment, and may not stop efforts to collect a debt from the debtor;
 11. That failure to make required minimum payments to creditors may be breaking the terms of agreements with creditors, may lead creditors to increase finance charges and pursue litigation, may be reported to

consumer reporting agencies, and may have an adverse effect on the debtor's credit report and credit score;

12. The earliest date by which the debt adjuster will contact each creditor to attempt to adjust the debtor's debts or, for settlement of unsecured debts, the estimated amount of money that shall be accumulated in savings before negotiations may begin; and
 13. That fees paid to a debt adjuster will not be used to pay creditors;
- (g) Provide that the debtor has a right to terminate the agreement at any time, without penalty or obligation, by giving the debt adjuster written or electronic notice, in which event:
1. The debt adjuster will refund all unexpended money that the debt adjuster or its agent has received from or on behalf of the debtor for the reduction or satisfaction of the individual's debt; and
 2. All powers of attorney granted by the debtor to the debt adjuster are revoked and ineffective;
- (h) Provide that the debtor authorizes any financial institution in which the debt adjuster or its agent has established a trust account to disclose to the Attorney General any financial records relating to the trust account; and
- (i) Provide that the debt adjuster will notify the debtor within five (5) days after learning of a creditor's decision to reject or withdraw from a plan. This notice shall include:
1. The identity of the creditor; and
 2. The right of the debtor to modify or terminate the agreement.
- (2) An agreement may confer on a debt adjuster a power of attorney to negotiate with creditors of the debtor on behalf of the debtor and to settle the debtor's debt if the amount the debtor will owe after settlement is less than fifty percent (50%) of the amount of the debt prior to settlement. An agreement shall not confer a power of attorney to settle the 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. An agreement shall provide that the debt adjuster shall obtain the assent of the debtor prior to settling a debt if the creditor has assented 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. 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.
- (3) An agreement shall not:
- (a) Provide for application of the law of any jurisdiction other than the United States and this state;
 - (b) Contain a provision that restricts the debtor's remedies under this chapter or under any other law; or

- (c) Contain a provision that:
 - 1. Limits or releases the liability of any person for not performing the agreement or for violating this chapter; or
 - 2. Indemnifies any person for liability arising under the agreement or this chapter.
- (4) All rights and obligations specified in paragraphs (g), (h), and (i) of subsection (1) of this section, subsection (2) of this section, subsection (3) of this section, and KRS 380.060, exist even if not provided in the agreement.
- (5) A provision in an agreement which violates paragraphs (g), (h), and (i) of subsection (1) of this section, subsection (2) of this section, or subsection (3) of this section is void.

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