

Chapter DFI-Bkg 73

ADJUSTMENT SERVICE COMPANIES

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Note: Chapter Bkg 73 as it existed on August 31, 1969 was repealed and a new chapter Bkg 73 was created effective September 1, 1969. Chapter Bkg. 73 was renumbered Chapter DFI-Bkg 73 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

DFI-Bkg 73.01 Fees of licensees. The fees permitted in this section are the only fees that may be assessed the debtor and include all charges of any kind or nature whatsoever. The fees shall be agreed upon in advance and stated in the contract or agreement established between the licensee and debtor. The fees for distributing funds may not be assessed the debtor until the debtor has made payment to the licensee for distribution to a creditor or creditors.

(1) Both of the 2 alternative fee plans set forth below may be used when contracting services with a debtor:

(a) The maximum monthly fee charged the debtor shall not exceed 10% of the amount of money paid to the licensee to be distributed to a creditor or creditors or \$120 in any one calendar month, whichever is less.

(b) A licensee may accept voluntary fees or contributions from the creditor or creditors in an amount not to exceed 15% of the funds disbursed to the individual creditor or creditors. The disbursements may not show discrimination based upon the creditors' willingness to make voluntary contributions to the licensee. If the fee is deducted from the disbursement, remittance records shall disclose the total amount credited to the individual accounts of the debtor. This amount must also be reflected in the disbursement record furnished the creditor or creditors.

(2) A single, one time, budget set up charge not to exceed \$50, or \$25 if the debtor continues with a debt adjustment plan administered by the licensee may be assessed.

(3) No fee may be charged on any money advanced or returned to the debtor.

History: Cr. Register, August, 1969, No. 164, eff. 9-1-69; am. (1), Register, September, 1979, No. 285, eff. 10-1-79; am. (1), Register, July, 1983, No. 331, eff. 8-1-83; r. and rec. Register, December, 1991, No. 432, eff. 1-1-92; am. (intro.), (1), Register, June, 1997, No. 498, eff. 7-1-97.

DFI-Bkg 73.02 Requirements of contract between debtor and licensee. (1) A copy of the contract or agreement must be given to the debtor at the time it is executed.

(2) The form of contract or agreement shall be signed by the parties and shall contain at least the following:

(a) The names and addresses of the licensee and the debtor.

(b) Provide in clear and precise terms payments and time of payments reasonably within the ability of the debtor to pay.

(c) The licensee's fee as set forth in s. DFI-Bkg 73.01. No other amounts may be charged or collected.

(d) The amount of each payment to be paid by or in behalf of the debtor.

(e) A statement to the effect that the debtor will be permitted to examine his or her accounts in the office of the licensee during regular office hours.

History: Cr. Register, August, 1969, No. 164, eff. 9-1-69; correction in (1) (e) made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.

DFI-Bkg 73.03 Business procedure. (1) OFFICE REQUIREMENTS. (a) *Shared office space.* The office of an adjustment service company shall not be shared or have a common wait-

ing room with a practicing attorney, collection agency, justice of the peace, loan or finance company. Before any other business is conducted in the same office with the licensee, prior approval must be granted by the office of administrator of the division of banking. The office shall not be located in a private residence unless the adjustment service office is used solely for business purposes, has an outside entrance and can be isolated from the remainder of the residence. If other approved business is conducted in the same office, the accounting records of such other business shall be kept separate from the account records of the adjustment service company.

(b) *Office hours.* Every licensee shall maintain regular office hours on designated business days from Monday through Friday and must be open for business at least 4 hours each designated business day. Whenever an office is not open for business at least 6 hours a day, or if the licensee maintains irregular office hours, a written notice must be filed with the office of the administrator of the division of banking setting forth the schedule of minimum office hours.

(2) FORMS TO BE APPROVED. All agreements, contracts, form letters or any other form whatsoever to be used by licensee in conducting its business shall be submitted in duplicate to the administrator of the division of banking for approval, and no such form or agreement shall be used until approved. A folder containing the file copy of all approved forms including the approved schedule of irregular office hours, if any, must be maintained in the licensed office in the order in which the forms were approved.

(3) TRUST FUND. A licensee shall not commingle payments received from debtors with the licensee's own property or funds, but shall maintain a separate account in an approved bank in which all payments received from debtors for the benefit of creditors shall promptly be deposited after receipt thereof and in which all payments shall remain until disbursements are made in his or her behalf or returned to him or her. Said trust account shall be used only for this purpose.

(4) REMITTANCES. Remittances shall be made to the creditors within 15 days after receipt of funds from debtor unless debtor requests in writing that funds be held in escrow for specific purposes for a period of not to exceed 180 days.

(5) RECEIPT REQUIREMENTS. Whenever a payment is received from a debtor or other person, a receipt showing the date said payment was received shall be prepared and a duplicate copy shall be available at all times in the office of the licensee. All receipts must be prepared at least in duplicate, be prenumbered by the printer and filed in consecutive numerical order and shall show the name and account number of the debtor, the name and address of the licensee, the date and amount paid, and the name or initials of the person accepting the payment.

(6) REPORT TO DEBTOR. Every licensee shall on written request from the debtor but not more than once every 4 months furnish said debtor with a report showing the amount paid to each creditor, the balance due on each account as shown on the office record, the amount of fees paid to the licensee, the total amount paid to the licensee by the debtor including fees, advances if any to the debtor and money held in escrow.

(7) REPORT OF BUSINESS CONDUCTED. Every licensee shall, on September 15 of each year submit a report as of July 1 to the

administrator of the division of banking containing such information as the administrator of the division of banking may require.

(8) BUSINESS BY MAIL. No licensee shall conduct a business by mail outside of the state of Wisconsin except accounts originating in Wisconsin can be handled by mail until they are liquidated.

History: Cr. Register, August, 1969, No. 164, eff. 9-1-69; am. (1) (b) and (4), Register, December, 1991, No. 432, eff. 1-1-92; corrections in (3) and (4) made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.

DFI-Bkg 73.04 Prohibited practices. No licensee shall:

(1) Purchase from a creditor any obligation of a debtor or make or arrange for the making of a loan to any debtor for the purpose of paying off the indebtedness unless no fee is charged.

(2) Have a direct or indirect interest in a collection agency either as owner, partner or as a stockholder.

(3) Pay any compensation or other consideration to any person for the referral of other customers to the licensee.

(4) Accept or receive any bonus, commission or other consideration for referring any debtor to any person for any reason or for the use of a list of delinquent debtors.

(5) Use any advertising whatsoever in the conduct of the adjustment service business which is false, misleading or deceptive or which might infer that a loan business is conducted by the licensee.

(6) Take a note or evidence of indebtedness or require a debtor to give an order or an assignment of wages. Licensee may take such an order or an assignment of order if requested to do so in writing by the customer for his or her convenience.

(7) Sell insurance or any other item to a customer.

(8) Act as a trustee under s. 128.21 Stats. for any debtor whose accounts have been or are being handled by the licensee under s. 218.02, Stats.

(9) Accept any fee, voluntary contribution, discount or reduction on an account of the debtor in excess of 15% of the amount owed unless the full amount received in excess of the 15% is for the benefit of the debtor as a reduction of the obligation owed the creditor.

History: Cr. Register, August, 1969, No. 164, eff. 9-1-69; am. (2), r. and recr. (9), Register, December, 1991, No. 432, eff. 1-1-92; correction in (6), made under s. 13.93 (2m) (b) 5., Stats., Register, December, 1991, No. 432.

DFI-Bkg 73.05 Office records and procedures. Office records shall be kept in the individual offices and shall include the following:

(1) Debtor ledger sheet or card on which at least the following data will be included:

(a) Name, address and account number of debtor.

(b) Name, address and account number of each creditor. (Each account to be numbered consecutively.)

(c) Total amount of accounts to be prorated as indicated by debtor.

(d) Reduction in amount of account as result of compromise or discount effected by licensee.

(e) Increase or decrease in amount of account as a result of verification with creditor.

(f) Corrected balance of amount due creditor after adjustment resulting from pars. (d) and (e).

(g) Amount and date each payment is received from the debtor.

(h) Actual fee taken from each payment made by the debtor.

(i) Actual fee earned from each payment made by the debtor but not received.

(j) Current balance due each creditor.

(2) A daily cash journal and disbursements journal shall be maintained showing the receipt of all debtor payments as well as the disbursement of these payments.

(3) Accounting records must be kept which show daily debtor payments received, disbursements to creditors, fees or discounts collected, advances, and money held back in escrow.

(4) Licensee's trust and operating bank accounts for creditor disbursements should be reconciled monthly with the canceled check together with voided or unused checks filed in numerical order after the monthly statement has been reconciled. The numerically numbered check stubs corresponding with all trust account and operating account checks shall be maintained in the office of licensee. All accounts shall be made available for reviewing in the office of administrator of the division of banking.

(5) It is not intended that the information required to be furnished in sub. (1) be retained in the same chronological order. The records of licensees may vary in the event that data processing procedures are adopted which will prevent the licensee from maintaining certain records required above. The office of administrator of the division of banking may approve of the records to be maintained as long as adequate information is available for examination purposes.

History: Cr. Register, August, 1969, No. 164, eff. 9-1-69; correction in (1) (f) and (5) made under s. 13.93 (2m) (b) 4., Stats., Register, December, 1991, No. 432.