

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED AMENDMENTS

TITLE 38: FINANCIAL INSTITUTIONS

CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
INSTITUTIONS

PART 140

DEBT MANAGEMENT SERVICE ACT

Section

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<u>140.150</u>	<u>Disposal of Records</u>

AUTHORITY: Implementing and authorized by the Debt Management Service Act [205 ILCS 665].

SOURCE: Filed February 14, 1972; old rules repealed, new rules adopted at 3 Ill. Reg. 27, p. 81, effective July 2, 1979; codified at 7 Ill. Reg. 13264; amended at 9 Ill. Reg. 1368, effective January 17, 1985; emergency amendment at 22 Ill. Reg. 1528, effective January 2, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 12550, effective July 6, 1998; amended at 26 Ill. Reg. 14243, effective October 1, 2002; amended at 34 Ill. Reg. _____, effective _____.

Section 140.10 Office Records

- a) Required Files
 - 1) Every licensee shall keep the following records or their equivalent in accord with generally accepted accounting principles as approved by the

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Department of Financial and Professional Regulation-Division of
Financial Institutions (Division):

- A) Client File
 - B) Client Activity Record
 - C) Payment Detail Report
 - D) Index System
- 2) If a computerized system is in use, licensee shall maintain a permanent file of back-up computer media for the end of each month.
- 3) All books and records shall be kept current and available for examination by the Division~~Department of Financial Institutions~~.
- b) Client File
The client file shall contain the following: the original contract, a listing of total debtor income, a list of creditors including the balance owed to each and monthly payments due and a copy of the agreed-upon debt management plan.
- c) Client Activity Record
The Client Activity Record shall contain the original entry and be a permanent record, and shall show the debtor's account number, name, address, date of contract, total indebtedness, monthly receipts, any fees charged, amounts disbursed to creditors and the estimated term of the contract to satisfy the amount owed.
- 1) If a contract is cancelled by a licensee or debtor and a fee is claimed but not paid, the debtor activity record shall show the reason for cancellation and the amount of any fee claimed to be owed.
 - 2) If legal action is taken to collect an unpaid fee, the client activity record shall include a copy of the judgment or action taken.
 - 3) A separate file of all litigation accounts shall be maintained in the office of the licensee.
- d) Payment Detail Report

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An individual Payment Detail Report shall be maintained for each debtor, including the account number, name and address, date of contract, total indebtedness, terms of payment and any fees charged. The report shall also show the monthly total of all receipts, disbursements, undisbursed or reserve funds and the distribution of any prorated fee.

- 1) A file shall be kept containing the paid or canceled Payment Detail Reports for a period of 5 years, showing the receipts and disbursement in full and the total amount of fees collected. In a non-computerized system, adding machine tapes verifying the receipts against all disbursements, including total fees, shall be attached to each client file.
 - 2) The entries on the Payment Detail Report shall correspond with the receipt of periodic statements given to the debtor and shall reflect the disbursement made to creditors showing the net and gross amount.
 - 3) In a non-computerized system, all entries shall be made in ink and no erasures whatsoever may be made on the report. In case of error, a line should be drawn in ink through the improper entry and the correct entry made on the following line. No entries shall be masked, covered or rendered illegible.
- e) Index System
An alphabetical index system shall be kept indicating name and address of clients, account number, date of contract and total indebtedness.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 140.30 Dual Business (Repealed)

~~No licensee shall transact any other business than that provided for by the Debt Management Service Act within the office, room or place of business occupied by the licensee, except as may be authorized in writing by the Director upon his finding that the character of such other business is such that the granting of such authority will not facilitate evasions of the Act or the Rules.~~

(Source: Repealed at 34 Ill. Reg. _____, effective _____)

Section 140.40 License

- a) For purposes of determining an applicant's qualifications for a license, the

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~~Division~~~~Department~~ shall find an applicant financially responsible if it has a positive net worth. Net worth means total assets minus total liabilities.

- b) An applicant shall possess at least 6 months of relevant business experience.
- c) In order to determine the applicant's general fitness and character, the Director of the Division of Financial Institutions with the authority delegated by the Secretary (Director) may require applicants to submit at least 2 letters of recommendation from persons familiar with the applicant or the applicant's business.
- d) Any applicant applying for a license shall submit the required bond, the application for license and all required information at the time of application for a license.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 140.50 General Operations

- a) The licensee shall explain clearly and distinctly to each customer exactly the services to be rendered and the fees to be paid.
- b) If, after analyzing the debtor's total income and expenses, it is determined that a payment plan should be developed, the licensee shall create a Debt Management Plan (DMP) that is considered feasible and practical to allow a payment of funds by the debtor for distribution to debtor's creditors as may be mutually agreed upon.
 - 1) The licensee shall seek to obtain the consent of a majority of the creditors to accept the terms of the payment plan. Creditor acceptance may be determined by acceptance of a payment without written objection.
 - 2) The debtor has the right to cancel the Debt Management Plan at any time by notifying the licensee, in writing, of debtor's desire to discontinue.
 - 3) The cancellation will take effect on the first day of the month following receipt of the cancellation notice from the debtor.
- c) When a contract is paid-in-full or satisfied, a statement shall be issued promptly to the debtor showing that the obligation has been satisfied. Licensee shall retain a copy of the contract marked "Paid" or "Satisfied" in the client file.

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- 1) If the debtor terminates payment to the licensee for a period exceeding 30 days, the licensee shall not consider pro rata fees as having been earned beyond 30 days following the next monthly contract date.
 - 2) The licensee is prohibited from charging a penalty for cancellation by either the debtor or the licensee except as provided in Section 12 of the Act.
- d) Every contract between a licensee and debtor shall:
- 1) List every debt to be prorated, with the creditor's name, and disclose the total of all such debts;
 - 2) Disclose in precise terms the rate and amount of the licensee's charge;
 - 3) Disclose the approximate number and amount of installments required to pay the debts in full;
 - 4) Disclose the name and address of the licensee and of the debtor;
 - 5) Contain such other provisions or disclosures as the Director of Department of Financial Institutions shall determine is necessary for the protection of the debtor and the proper conduct of business by a licensee;
 - 6) Disclose the right of the debtor to cancel at any time;
 - 7) Inform the debtor of any relationship that exists between the licensee and any creditor.
- e) All contracts shall be originated at the office of the licensee or its agent.
- f) When adjustments are needed to change the indebtedness listed in the contract, the licensee may execute a new contract using the revised figures or use a rider form executed in accordance with instructions provided in the rider.
- g) All legal documents and other forms that a debtor shall be required to sign shall be filed with the Director of the Department of Financial Institutions prior to use.
- h) A licensee shall deliver a copy of any contract, agreement, or Debt Management

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Plan between the licensee and the debtor to the debtor immediately after the debtor executes it, and the debtor's copy shall be executed by the licensee.

- i) A calendar month is the period from the given date in one month to the same numbered date in the following month and if there is no same numbered date in the following month, to the last date in the following month. Not more than one (1) month's service fee may be considered earned in any calendar month. A calendar month commences on the anniversary date of the contract.
- j) A licensee shall deliver a receipt to the debtor for each cash payment.
- k) The licensee shall make distribution to the debtor's creditors within 30 days after initial receipt of funds, and thereafter distributions shall be made to creditors within 30 days after receipt, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period to accumulate a certain sum, but in any case not to exceed an additional 30 days, or as authorized by the contract.
- l) At least once each 3 months, the licensee shall render an accounting to the debtors which shall itemize the total amount received from the debtor, the total amount paid to each creditor, the total amount which any creditor has agreed to accept as payment in full on any debt owed him by the debtor, the amount of charges deducted, and any amounts held in reserve. A licensee shall render such an accounting to a debtor within 5 days after receipt of a written demand.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 140.80 Advertising

- a) Advertising shall not be *false, misleading or deceptive* [205 ILCS 665/13]. No statement shall be permitted that states or implies that no financial problem is too great for the licensee to solve. No statement shall be permitted that states or implies that the licensee will use his own cash to pay the debtor's accounts. All advertisements shall contain the phrase, "we do not lend money".
- b) Upon specific request by the ~~Division~~Department, licensees shall forward to the Director the complete text of all advertising copy.
- c) All advertising shall contain the true name and address of the licensee.

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(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 140.100 Examination

- a) The Director may make an examination of the office and records of each licensee and shall charge \$400 for each examiner day or portion thereof.
- b) All communications shall be addressed to the Director, ~~Division~~Department of Financial Institutions, to any address designated by the Director. All fees shall be paid to the "Director of Financial Institutions".
- c) The ~~Division~~Department may conduct an examination for the purpose of verifying that the licensee has taken necessary actions to correct violations to the Act and/or related rules and shall charge the licensee \$550 for each examiner day or portion thereof, when the Director determines the verification examination must be performed on site at any facility of the licensee.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 140.120 Hearing Procedures

- a) Hearings
After receipt of a written request for a hearing, the Director shall send to the respondent requesting the hearing, by certified mail, at least 10 days prior to the date set for such hearing, a Notice of Hearing. The Notice shall include the date and the time and place of the hearing to review the propriety of any administrative actions made pursuant to the Act.
- b) The Director may designate, in writing, a Hearing Officer who shall have the minimum qualifications of being licensed to practice law in Illinois. A Hearing Officer may be disqualified based on bias or conflicts of interest. The Hearing Officer shall have the authority to:
 - 1) Examine or permit examination of any witness under oath;
 - 2) Determine the order of appearance of all parties;
 - 3) Receive all evidence and testimony and rule on its admissibility as well as require the production of any relevant document or witness;

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- 4) Rule on objections to evidence;
 - 5) Make a written report with recommendations to the Director which shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed; and
 - 6) Require any party or his attorney to provide proposed findings of fact or conclusions of law for consideration in his report.
- c) General Provisions
- 1) Delivery of notice shall be deemed complete when the Notice is deposited in the U.S. mail.
 - 2) Continuances
 - A) A continuance shall be granted for good cause by the Hearing Officer which shall be:
 - i)A) In writing and signed by the respondent or his attorney and shall state the reasons for the request.
 - ii)B) Delivered to the Hearing Officer at least three days prior to the scheduled hearing.
 - B) For the purposes of this subsection (c)(2), good cause shall require the respondent to demonstrate real and compelling need for additional time. It shall include, but not be limited to, illness, service in the armed forces, etc.
 - 3) The respondent shall bear any and all costs of the hearing.
 - 4) A court reporter will be present and considered as part of the costs of the hearing.
- d) Conduct of Hearings
- 1) The Hearing Officer shall open the hearing by presenting for the record his letter of authorization from the Director.

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- 2) The rules of evidence and privilege as applied in civil cases in the circuit courts of this State shall be followed. The Hearing Officer may admit evidence not admissible under ~~thesuch~~ rules if such evidence may be relevant to the case.
- 3) The Hearing Officer may, on his or her own motion or the motion of one of the parties, take notice of matters of which the circuit courts of this State may take judicial notice. Notice may be taken of generally recognized technical or scientific facts within the Division's~~Department's~~ specialized knowledge if parties are notified, before or during the hearing, and shall be afforded an opportunity to contest the material so noticed. The burden of opposing any material admitted upon notice shall be upon the party so opposing.
- 4) Failure to attend the hearing shall result in the dismissal of the respondent's petition and an entry of a default against the respondent. Within 30 days from dismissal of the respondent's petition, the respondent may petition the Hearing Officer for reconsideration if the respondent can establish that his failure to attend was caused by events beyond his control and he exercised due diligence to attend or seek a continuance.
- 5) The record of any hearing shall include:
 - A) All pleadings, and evidence received whether admitted or excluded;
 - B) A statement of all matters officially noticed;
 - C) All offers of proof, objections and rulings thereon;
 - D) All proposed findings and exceptions;
 - E) Any decision, opinion, or report by the Hearing Officer;
 - F) Any evidence excluded by the Hearing Officer, even though ~~thesuch~~ evidence is not used in the determination of the decision;
 - G) A proceeding transcript ~~thatwhich~~ shall be recorded by such means as to adequately ensure the preservation of the testimony.

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- 6) Within 60 days after the hearing or the receipt of all necessary documents, the Hearing Officer shall report to the Director.
 - 7) Within 30 days after receiving the report of the Hearing Officer, the Director shall issue his or her decision, which shall be served on the respondent by registered or certified mail, return receipt requested. Copies of the Hearing Officer's report to the Director are available upon written request.
- e) Petition to Reconsider
- 1) Within 30 days after receipt of the Director's decision, the respondent may petition the Director for reconsideration based upon a verified petition. An affidavit shall accompany the petition stating that the decision was against the preponderance of the evidence, was contrary to law, or was arbitrary or capricious, or is affected by newly discovered evidence not in existence at the time of the initial hearing or ~~that which~~ could not have been discovered using due diligence at that time.
 - 2) The Director shall determine within 15 days whether to reconsider the case. If the Director determines, after reading the affidavit, that one or more of the findings listed in subsection (e)(1) exists, a hearing may be held and shall be limited to only those issues raised in the petition to reconsider. If reconsideration is denied, the Director's initial decision shall be the final administrative decision of the Division~~Department~~.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 140.140 Penalties

- a) The Director may penalize a licensee, or other person doing business without the required license, in an amount not exceeding \$10,000 per violation, when in the opinion of the Director:
 - 1) the licensee, or other person, is violating or is about to violate any provision of the Act or any rule or condition imposed in writing by the Division~~Department~~; or
 - 2) any fact or condition exists that, if it had existed at the time of the original application for the license, would have warranted the Director refusing to

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issue the license.

- b) The Director may penalize a licensee, or other person, prior to a hearing.
- c) The Director shall serve notice of this penalty, including a statement of the reasons for the penalty, either personally or by certified mail, return receipt requested. Service by mail shall be deemed completed if the notice is deposited in the U.S. mail.
- d) Within 10 days after service of the notice of penalty, the licensee or other person may request, in writing, a hearing.
- e) The hearing shall be conducted in accordance with the hearing procedures in Section_140.120 of this Part.

(Source: Amended at 34 Ill. Reg. _____, effective _____)

Section 140.150 Disposal of Records

- a) When disposing of records that contain personal information, including, but not limited to, social security numbers, driver's license numbers or non-driver identification card numbers, financial account numbers or codes, debit card numbers or codes, automated teller machine card numbers or codes, electronic serial numbers, or personal identification numbers, a debt settlement provider shall take all reasonable measures necessary to protect against unauthorized access to or use of the records.
- b) Licensees must implement policies and procedures to implement this Section and the measures that may be taken to comply with this Section include the following:
 - 1) implementing and monitoring compliance with policies and procedures that require the burning, pulverizing or shredding of paper documents containing personal information so that the personal information cannot practicably be read or reconstructed;
 - 2) implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the personal information cannot practicably be read or reconstructed;

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- 3) a licensee may enter into a written contract with a third party engaged in the business of record destruction to dispose of records containing personal information.

(Source: Added at 34 Ill. Reg. _____, effective _____)