

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

TITLE 38: FINANCIAL INSTITUTIONS

CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 145

DEBT SETTLEMENT CONSUMER PROTECTION ACT

Section

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AUTHORITY: Implementing and authorized by the Debt Settlement Consumer Protection Act [225 ILCS 429].

SOURCE: Adopted at 34 Ill. Reg. _____, effective _____.

Section 145.10 Office Records

- a) Required Files
 - 1) Every debt settlement provider shall keep the following records, if applicable, or their equivalent in accord with generally accepted accounting principles as approved by the 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

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- 2) If a computerized system is in use, debt settlement provider 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.
- b) **Client File**
The client file shall contain the following: the original contract; a list of creditors, including the balance owed to each and any payments due; the total amount of any fees paid by the debtor; the amount held in trust (if applicable); any settlement offers made and received on each of the debtor's accounts; all evidence of any legally enforceable settlements with the debtor's creditors; a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practical; and copies of all receipts issued for each payment made by the debtor.
- c) **Client Activity Record**
The Client Activity Record shall contain the original entry, be a permanent record, and show the debtor's account number, name, address, date of contract, total indebtedness, monthly receipts, any fees charged, amounts disbursed to creditors, if applicable, and the estimated term of the contract to satisfy the amount owed.
- 1) If a contract is cancelled by a debt settlement provider 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 debt settlement provider.
- d) **Payment Detail Report**
An individual Payment Detail Report shall be maintained for each debtor, corresponding to the monthly accounting provided to the debtor pursuant to Section 65(c) of the Debt Settlement Consumer Protection Act (Act).
- 1) A file shall be kept containing the paid or canceled Payment Detail

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Reports for a period of 5 years, showing the receipts and disbursements, if applicable, 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 monthly accounting given to the debtor and shall reflect the disbursements 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.

Section 145.20 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) **Compliance Methods**
 - 1) Debt settlement providers must implement policies and procedures to implement this Section and the measures that may be taken to comply with this Section include the following:
 - A) 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;

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- B) 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.
- 2) A debt settlement provider may enter into a written contract with a third party engaged in the business of record destruction to dispose of records containing personal information.

Section 145.30 Bank Account; If Applicable

- a) Trust account bank statements and cancelled checks shall be retained at the office of the debt settlement provider for a period of 3 years.
- b) Copies of the original trust account bank statement and canceled checks, in hard copy, microfilm or microfiche, or by other electronic means, shall be kept at the office of the debt settlement provider, at debt settlement provider's headquarters, or at an off-site storage facility for a period of 5 years.

Section 145.40 Application for License

At the time of making an application, applicant shall pay to the Secretary of the Department of Financial and Professional Regulation (Secretary) the non-refundable sum of \$350 as an application fee and the additional sum of \$1,000 as an annual license fee.

Section 145.50 License

- a) For purposes of determining an applicant's qualifications for a license as a debt settlement provider, the Division 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 as a debt settlement provider shall submit the required

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bond, the application for license and all required information at the time of application for a license.

Section 145.60 Examination Fee

- a) The Division shall charge \$400 for each examiner day or part thereof and actual travel costs for any examination of records conducted pursuant to the Act.
- b) The Division may conduct an examination for the purpose of verifying that the debt settlement provider has taken necessary actions to correct violations of the Act and/or this Part and shall charge the licensee \$550 for each examiner day or portion thereof, when the Secretary determines the verification examination must be performed on site at any facility of the debt settlement provider.

Section 145.70 Prohibited Activities

- a) A debt settlement provider shall not take:
 - 1) Any contract, promise to pay, or other instrument that has any blank spaces when signed by a debtor;
 - 2) Any negotiable instrument for the debt settlement provider's charges;
 - 3) Any note, wage assignment, real estate or chattel mortgage, or other security to secure the licensee's charges;
 - 4) Any confession of judgment or power of attorney to confess judgment against the debtor or to appear for the debtor in a judicial proceeding;
 - 5) Any real or personal property as security for payment of a fee;
 - 6) Concurrent with the signing of the contract or as part of the application for the contract, a release of any obligation to be performed on the part of the debt settlement provider.
- b) A debt settlement provider shall not take an appointment as attorney in fact or power of attorney.
- c) A debt settlement provider shall not take any legal instrument from the debtor other than the service contract and authorized rider.

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- d) A debt settlement provider shall not accept a fee from any person or other entity in exchange for referring potential customers.
- e) No fees shall be paid to an attorney, lending institution, or any other source for the referral of customers.
- f) A debt settlement provider shall not solicit or require a debtor to purchase, or agree to purchase, any policy of insurance.
- g) A debt settlement provider shall not lend money or extend credit or include in the contract any debts not established prior to the execution of the contract.
- h) No advance of the debt settlement provider's funds on the debtor's behalf shall be made by a debt settlement provider to any creditor or to the debtor.

Section 145.80 Revocation – Suspension – Surrender of License

- a) If it is determined that the Secretary had the authority to issue the suspension or revocation of a license pursuant to Section 50 of the Act, he or she may issue orders as may be reasonably necessary to correct, eliminate or remedy the situation.
- b) A debt settlement provider may surrender any license by delivering to the Secretary written notice that it surrenders the license, but the surrender shall not affect the debt settlement provider's civil or criminal liability for acts committed prior to the surrender, or affect the liability on its bond or bonds, or entitle the debt settlement provider to a return of any part of the annual license fee.

Section 145.90 Annual Report

- a) The Secretary shall publish the form of annual report on the Division's website that shall be filed by the debt settlement provider as provided in Section 33 of the Act.
- b) The annual report shall be due to the Division on March 1 for the previous calendar year.

Section 145.100 Proof of Payment

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Upon completion of the contract, the debt settlement provider shall mail a statement to the debtor stating that the account has been closed and listing the name and address of each creditor paid in full and names and addresses of any creditors remaining unpaid.