

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Note: Chapter Bkg 73 as it existed on August 31, 1969 was repealed and a new chapter Bkg 73 was created effective September 1, 1969.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 73.001 Definitions. In this chapter:

(1) “Applicant” means an applicant for a license under s. 218.02, Stats.

(2) “Division” means the division of banking.

(3) “Licensee” means a holder of a license issued under s. 218.02, Stats.

(4) “Nationwide multistate licensing system and registry” or “NMLS” means the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC or any successor or affiliate entity, for the licensing and registration of persons in financial services industries.

(5) “Reinstatement period” means the period beginning January 1 and ending on the last day of February, or such other period prescribed by the division.

(6) “Renewal period” means the period beginning November 1 and ending December 31, or such other period prescribed by the division.

(7) “Unique identifier” means a number or other identifier assigned by protocols established by the NMLS.

History: CR 22–020; cr. Register May 2023 No. 809, eff. 9–1–23.

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 recr. 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.

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; 2013 Wis. Act 136; am. (2) (e) Register March 2014 No. 699, eff. 4–1–14.

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 waiting 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 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 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 to the division of banking for approval, and no such form or agreement shall be used until 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.

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; CR 03-043: r. (8) Register August 2003 No. 572, eff. 9-1-03; 2013 Wis. Act 136: am. (1), (2), r. (7) Register March 2014 No. 699, eff. 4-1-14.

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 or 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 by 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 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; 2013 Wis. Act 136: am. (4), (5) Register March 2014 No. 699, eff. 4-1-14.

DFI-Bkg 73.06 Nationwide Multistate Licensing System and Registry. (1) **PARTICIPATION.** (a) The division shall utilize the NMLS with respect to applicants and licensees.

The division may establish relationships or contracts with the NMLS or other entities designated by the NMLS to collect and maintain records and process transaction fees or other fees. With respect to any form, fee, or other information required to be submitted to the division by an applicant or licensee, the division may require the applicant or licensee to submit such form, fee, or other information directly to the NMLS.

(b) Each applicant and licensee shall register with, and maintain a valid unique identifier issued by, the NMLS.

(c) The division may require an applicant or licensee to provide to the NMLS any information that the division determines to be relevant to the application or to any responsibility administered or conducted through the NMLS that is related to the licensed activity.

(d) The division may require an applicant or licensee, or an individual with the power to direct the management or policies of the applicant or licensee, to submit an independent credit report from a consumer reporting agency, an investigative background report prepared by an independent search firm, fingerprints, or any other personal or professional history information deemed necessary by the division. The division may require fingerprints for the purposes of identifying the individual and to determine whether the individual has a record of warrants, arrests, or convictions in any jurisdiction. Fingerprints may be submitted, directly or as provided in sub. (2), to the federal bureau of investigation and any government agency or entity authorized to receive this information for a state and national criminal history record check.

(e) The division may rely on the NMLS to establish any dates relating to application or reporting deadlines for applicants and licensees, to establish requirements for amending or surrendering licenses, or to establish any other requirements applicable to applicants and licensees to the extent the requirements are a condition of the state's participation in the NMLS.

(f) Applicants and licensees are responsible for any service, access, or other fees charged by the NMLS for use of the system. Whenever the division requires fingerprinting, an independent credit report from a consumer reporting agency, an investigative background report prepared by an independent search firm, or any other information in connection with an application or other filing, any associated costs shall be paid by the applicant or the parties to the application.

(2) CHANNELING INFORMATION. To reduce the points of contact that the division may have to maintain, and to facilitate compliance with any requirement that an applicant provide identity information, including social security number or federal employer identification number, fingerprints, credit reports, or other personal history, the division may use the NMLS as a channeling agent for requesting and distributing information to and from any source so directed by the division, including the federal bureau of investigation, any state or federal department of justice, or any other governmental agency.

(3) CONFIDENTIAL INFORMATION. (a) If any information or material is considered confidential or privileged under federal or state law before it is provided or disclosed to the NMLS, it shall continue to be confidential or privileged after it is provided or disclosed to, and while maintained by, the NMLS, except to the extent federal or state law expressly provides otherwise and except as provided in par. (c). Confidential or privileged information or material under this paragraph is not subject to any of the following:

1. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of federal or state government.

2. Subpoena or discovery, or admission into evidence, in any private civil action or administrative proceeding, unless the person to whom the information or material pertains waives any right or protection of confidentiality or privilege in the information or material.

(b) Confidential or privileged information or material under par. (a) may be shared with any state or federal regulatory agency having supervisory authority over activities governed by s. 218.02, Stats., without losing any right or protection of confidentiality or privilege under federal or state law.

(c) This subsection does not prohibit the NMLS from providing public access to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, licensees.

(4) COOPERATIVE ARRANGEMENTS. The division may enter into cooperative, coordinating, or information-sharing arrangements or agreements with other governmental agencies or with associations representing other governmental agencies, including the Conference of State Bank Supervisors, subject to the requirements of s. 220.06, Stats.

History: CR 22-020: cr. Register May 2023 No. 809, eff. 9-1-23.

DFI-Bkg 73.07 Changes to information. A licensee shall keep current and accurate all material information on file with the division and the NMLS. If the information changes in any material respect, the licensee shall notify the division and the NMLS of the change within 10 days after the change.

History: CR 22-020: cr. Register May 2023 No. 809, eff. 9-1-23.

DFI-Bkg 73.08 License renewal and reinstatement.

(1) During the renewal period, a licensee may seek to renew a license by submitting all fees owed to the division or the NMLS, along with any additional documentation required by the division or applicable law, through the NMLS or in such other manner as directed by the division.

(2) During the reinstatement period, a licensee may reinstate a license by submitting all the items in sub. (1), plus an additional non-refundable fee of \$100, through the NMLS or in such other manner as directed by the division.

History: CR 22-020: cr. Register May 2023 No. 809, eff. 9-1-23.

DFI-Bkg 73.09 Annual reports and financial statements.

(1) ANNUAL REPORTS. Each licensee shall annually, on or before March 15, submit through the NMLS or in such other manner as directed by the division, a report giving such reasonable and relevant information as the division may require concerning the business transacted by the licensee. This report shall be made in the form and manner prescribed by the division.

(2) FINANCIAL STATEMENTS. Each licensee shall annually, no later than 90 days following the end of its most recently completed fiscal year, submit through the NMLS or in such other manner as directed by the division, a copy of the licensee's financial statements for that fiscal year. The financial statements shall include a balance sheet and income statement and shall be prepared in accordance with generally accepted accounting principles.

History: CR 22-020: cr. Register May 2023 No. 809, eff. 9-1-23.