

# DEBT ADJUSTERS AND COLLECTION AGENCIES

## DEBT ADJUSTERS

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## DEBT ADJUSTERS

**425.010. Definitions.** - As used in sections 425.010 to 425.043, the following terms mean:

(1) **"Debt adjuster"**, a person who provides or offers to provide debt relief services for a consideration;

(2) **"Debt management plan"** or **"DMP"**, a written agreement or contract between a debt adjuster and a debtor whereby the debt adjuster, in return for payment by the debtor of no more than reasonable consideration, will provide debt relief services that contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency;

(3) **"Debtor"**, an individual or individuals jointly and severally or jointly or severally indebted;

(4) **"Debt relief services"**, any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a debtor and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector;

(5) **"Debt settlement plan"** or **"DSP"**, a written agreement or contract between a debt adjuster and a debtor whereby the debt adjuster, in return for payment by the debtor of consideration, will provide debt relief services that contemplate that creditors will settle debts for less than the principal amount of the debt;

(6) **"Reasonable consideration"**, a fee to cover the cost of administering a debt management plan, not to exceed:

(a) Fifty dollars for an initial or set-up fee or charge for establishing a DMP; and

(b) The greater of thirty-five dollars per month or eight percent of the amount distributed monthly to creditors under such DMP.

(L. 1963 p. 646 § 1, A.L. 2007 H.B. 329, A.L. 2011 H.B. 661)

**425.020. Debt adjusting - penalty.** - Any person who acts or offers to act as a debt adjuster in this state other than under a debt management plan or debt settlement plan is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

(L. 1963 p. 646 § 1, A.L. 2007 H.B. 329, A.L. 2011 H.B. 661)

**425.025. Debt management plan or debt settlement plan may be administered free of charge.** - Nothing in sections 425.010 to 425.043 shall be construed to

prevent any individual or organization from administering a debt management plan or debt settlement plan free of charge.  
(L. 2007 H.B. 329, A.L. 2011 H.B. 661)

**425.027. Surety bond for debt adjusters required, amount.** - Each initial license application shall be accompanied by a surety bond in the principal sum in accordance with the following categories:

- (1) Fifty thousand dollars if the applicant declares that the operation will handle no consumer monies; or  
(2) One hundred thousand dollars otherwise.

The bond shall be for the benefit of any debtor who is damaged by the debt adjuster's breach of the debt management plan or debt settlement plan or the debt adjuster's failure to properly administer debtor funds collected or disbursed under the debt management plan or debt settlement plan. The director of the division of finance may investigate any debtor complaint and make claim on a bond for the benefit of a debtor or release the bond to a debtor to make a claim.  
(L. 2007 H.B. 329, A.L. 2011 H.B. 661)

**425.030. Circuit court may enjoin, appoint receiver.** - The circuit court shall have power, in an action brought in the name of the state by the attorney general, to enjoin any person from acting or offering to act as a debt adjuster; and, in the action, may appoint a receiver for the property and money employed in the transaction of business by the person as a debt adjuster, to insure, so far as may be possible, the return to debtors of so much of their money and property as has been received by the debt adjuster, and has not been paid to the creditors of the debtors.

(L. 1963 p. 646 § 1)

**425.040. Who not to be considered debt adjusters.** - The following persons shall not be considered debt adjusters for the purposes of sections 425.010 to 425.043:

- (1) Any attorney at law of this state;  
(2) Any person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts;  
(3) Any person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this state or of the United States;  
(4) Any person who is a creditor of the debtor, or an agent of one or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor; and  
(5) Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in providing debt relief services.

(L. 1963 p. 646 § 1, A.L. 2011 H.B. 661)

**425.043. Required disclosures - misrepresentations and payment prohibited - funds held, requirements.** - 1. Before a debtor consents to pay for goods or services offered, debt adjusters shall disclose truthfully, in a clear and conspicuous manner, the following material information:

(1) The amount of time necessary to achieve the represented results, and the extent that the debt relief service may include a settlement offer to any of the debtor's creditors or debt collectors, the time by which the debt adjuster will make a bona fide settlement offer to each of them;

(2) To the extent that the debt relief service may include a settlement offer to any of the debtor's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the debtor shall accumulate before the debt adjuster will make a bona fide settlement offer to each of them;

(3) To the extent that any aspect of the debt relief service relies upon or results in the debtor's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the debtor's creditworthiness, may result in the debtor being subject to collection actions or sued by creditors or debt collectors, and may increase the amount of money the debtor owes due to the accrual of fees and interest; and

(4) To the extent that the debt adjuster requests or requires the debtor to place funds in an account at an insured financial institution, that the debtor owns the funds held in the account, the debtor may withdraw from the debt relief service at any time without penalty, and, if the debtor withdraws, the debtor shall receive all funds in the account, other than funds earned by the debt adjuster, within seven business days of the debtor's request.

2. A debt adjuster shall not misrepresent, directly or by implication, any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a debtor may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the debtor shall accumulate before the debt adjuster will initiate attempts with the debtor's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the debtor's debt; the effect of the service on the debtor's creditworthiness; the effect of the service on collection efforts of the debtor's creditors or debt collectors; the percentage or number of debtors who attain the represented results; and whether a debt relief service is offered or provided by a nonprofit entity.

3. A debt adjuster shall not receive payment of any fee or consideration for any debt relief service until and unless:

(1) The debt adjuster has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt under a debt management plan or debt settlement plan;

(2) The debtor has made at least one payment under such debt management plan or debt settlement plan; and

(3) The fee or consideration for settling each individual debt enrolled in a debt settlement plan shall either:

(a) Bear the same proportional relationship to the total fee for settling the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are amounts owed at the time the debt was enrolled on the debt relief service; or

(b) Be a percentage of the amount saved as a result of the settlement. The percentage charged shall not change from one individual debt to another. The amount saved is the difference between the amount owed at the time the debt was enrolled in the debt relief service and the amount actually paid to satisfy the debt.

4. Nothing in this section prohibits requesting or requiring the debtor to place funds in an account to be used for the debt adjuster's fees for payments to creditors or debt collectors in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of debt, provided that:

(1) The funds are held in an account at an insured financial institution;

(2) The debtor owns the funds held in the account and is paid accrued interest on the account, if any;

(3) If the debt adjuster does not administer the account, the entity administering the account is not owned or controlled by, or in any way affiliated with, the debt adjuster;

(4) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business by the debt adjuster; and

(5) The debtor may withdraw from the debt relief service at any time without penalty, and shall receive all funds in the account, other than funds earned by the debt adjuster in compliance with subdivision (3) of subsection 3 of this section, within seven business days of the debtor's request.

(L. 2011 H.B. 661)

**425.300. Real party in interest on assignment of claim for billing, collection, bringing suit, attorney required to appear in court - court may sever actions.**

Collection agencies may take assignment of claims in their own name as real parties in interest for the purpose of billing and collection and bringing suit in their own and the claimant's names thereon, provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a duly authorized and licensed attorney at law. Upon good cause being shown, a court may sever any actions brought under this section.

(L. 1992 S.B. 688 § 5)