

CHAPTER 80-A**DEBT MANAGEMENT SERVICES****§6171. Short title**

This chapter may be known and cited as the "Debt Management Services Act." [PL 2007, c. 36, §1 (AMD).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW). PL 2007, c. 36, §1 (AMD).

§6172. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1999, c. 560, §3 (NEW).]

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.
[PL 1999, c. 560, §3 (NEW); PL 2007, c. 273, Pt. B, §6 (REV).]

1-A. Certified counselor. "Certified counselor" means an individual certified by a training program or organization approved by the administrator that authenticates the competence of the individual providing education and assistance to consumers in connection with debt management services.
[PL 2007, c. 36, §2 (NEW).]

1-B. Consumer education program. "Consumer education program" means a program or plan that seeks to improve the financial literacy of consumers.
[PL 2007, c. 36, §3 (NEW).]

1-C. Consumer's obligation. "Consumer's obligation" means a debt or debts incurred for personal, family or household purposes and does not include a debt or debts incurred for business or commercial purposes.
[PL 2007, c. 36, §4 (NEW).]

2. Debt management service. "Debt management service" means:

A. The receiving of money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; [PL 2003, c. 172, §1 (NEW).]

B. Arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; [PL 2003, c. 172, §1 (NEW).]

C. Exercising control, directly or indirectly, or arranging for the exercise of control over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; or [PL 2003, c. 172, §1 (NEW).]

D. Acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, settling, discharging, reaching a compromise on or otherwise altering the terms of payment of the consumer's obligation. [PL 2003, c. 172, §1 (NEW).]

[PL 2003, c. 172, §1 (RPR).]

3. Debt management service provider. "Debt management service provider" means a person, wherever located, that provides or offers to provide to a consumer in this State any debt management services, in return for a fee or other consideration, and a person located in this State that provides or offers to provide to a consumer who is not a resident of this State any debt management services, in return for a fee or other consideration. "Debt management service provider" does not include:

A. A supervised financial organization; [PL 1999, c. 560, §3 (NEW).]

B. A supervised lender; or [PL 1999, c. 560, §3 (NEW).]

C. A person admitted to the practice of law in this State as of the effective date of this chapter, except to the extent that debt management services constitute the exclusive activity of that attorney. [PL 1999, c. 560, §3 (NEW).]

[PL 2007, c. 36, §5 (AMD).]

4. Person. "Person" means an individual or an organization. [PL 1999, c. 560, §3 (NEW).]

5. Supervised financial organization. "Supervised financial organization" has the same meaning as in Title 9-A, section 1-301, subsection 38-A. [PL 1999, c. 560, §3 (NEW).]

6. Supervised lender. "Supervised lender" has the same meaning as defined in Title 9-A, section 1-301, subsection 39. [PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW). PL 2003, c. 172, §1 (AMD). PL 2007, c. 36, §§2-5 (AMD). PL 2007, c. 273, Pt. B, §6 (REV).

§6173. Registration and annual reregistration

1. Nonprofit organizations. [PL 2007, c. 36, §6 (RP).]

2. Registration and reregistration. An organization desiring to act, or continue to act, as a debt management service provider shall apply to the administrator for registration or reregistration in accordance with this chapter. The application must be in a form prescribed by the administrator. The administrator may refuse the application if it contains erroneous or incomplete information. A registration may not be issued unless the administrator, upon investigation, finds that the financial soundness and responsibility, insurance coverage, consumer education programs and services component, character and fitness of the applicant and, when applicable, its partners, officers or directors, warrant belief that the business will be operated honestly and fairly within the purposes of this chapter. The initial application for registration may be filed at any time and must include a fee of \$500. A registration or reregistration under this chapter expires on December 31st of the year approved. An annual reregistration application must be filed by December 1st of each year for the following year and must include a fee of \$250. [PL 2007, c. 36, §7 (AMD).]

2-A. Separate registration required. A separate registration is required for each place of business. An application fee of \$250 must accompany an application for registration for a place of business other than that of the first registered location of the registrant. [PL 2009, c. 243, §4 (NEW).]

3. Action on registration application. The administrator shall take action on an application within 30 days after the administrator has accepted the application as complete. Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for registration if the administrator has notified the applicant in writing that the application has been denied or the

administrator has not issued a registration within 30 days after the application for the registration was accepted as complete by the administrator. A request for a hearing may not be made more than 60 days after the application was accepted as complete or the administrator has mailed a written notice to the applicant stating that the application has been denied and stating the reasons for the denial of the application.

[PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW). PL 2007, c. 36, §6, 7 (AMD). PL 2009, c. 243, §4 (AMD).

§6174. Bond required

Each application must be accompanied by evidence of a surety bond in a form approved by the administrator in the aggregate amount of \$50,000 to run to the administrator for use by the administrator and any person or persons who may have a cause of action against a debt management service provider. The terms of the bond must run concurrently with the period of time during which the registration is in effect. [PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW).

§6174-A. Limits on fees and charges

1. Initial fee. A debt management service provider may charge to a consumer a reasonable one-time initial or set-up fee in an amount not to exceed \$75.

[PL 2007, c. 36, §8 (NEW).]

2. Service fees. In addition to the fee set forth in subsection 1, a debt management service provider may assess either of the following fees:

A. For a debt management service provider that distributes monthly payments to a consumer's creditor or creditors, a reasonable monthly fee not to exceed \$40; or [PL 2007, c. 36, §8 (NEW).]

B. For a debt management service provider that acts or offers to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, settling, discharging, reaching a compromise on or otherwise altering the terms of payment of the consumer's obligation, a reasonable fee not to exceed 15% of the amount by which the consumer's debt is reduced as part of each settlement. [PL 2007, c. 36, §8 (NEW).]

[PL 2007, c. 36, §8 (NEW).]

3. Limitation on excess fees. A debt management service provider may not charge more than one fee authorized under subsections 1 and 2 on the basis that the consumer has entered into a debt management services agreement for joint obligations of a consumer and a consumer's spouse or other member of the consumer's household.

[PL 2007, c. 36, §8 (NEW).]

4. Application. This section does not apply to a debt management service provider located in this State that does not provide debt management services to a consumer who is a resident of this State.

[PL 2007, c. 36, §8 (NEW).]

SECTION HISTORY

PL 2007, c. 36, §8 (NEW).

§6174-B. Counselor certification; consumer education program

1. Certified counselor. A debt management service provider shall provide evidence to the administrator within 12 months after initial employment of a counselor that the counselor is a certified counselor.

[PL 2007, c. 36, §9 (NEW).]

2. Consumer education. A debt management service provider shall offer a consumer education program approved by the administrator. Providers of consumer education programs shall submit each such program to the administrator for approval, and each such submission must be accompanied by a \$100 fee. A debt management service provider may charge consumers a reasonable fee for the program not to exceed \$50.

[PL 2009, c. 243, §5 (AMD).]

3. Application. This section does not apply to a debt management service provider located in this State that does not provide debt management services to a consumer who is a resident of this State.

[PL 2007, c. 36, §9 (NEW).]

SECTION HISTORY

PL 2007, c. 36, §9 (NEW). PL 2009, c. 243, §5 (AMD).

§6175. Handling of consumer funds

1. Funds deposited in trust account. The debt management service provider shall deposit, within 2 business days of receipt, all funds received from or on behalf of a consumer for payment to a creditor or creditors in a federally insured trust account for the benefit of the consumer in a supervised financial organization. Any trust account established to receive consumer funds is free from trustee process and unavailable to creditors of the debt management service provider.

[PL 1999, c. 560, §3 (NEW).]

2. Requirements for handling of funds. The debt management service provider shall:

A. Maintain separate records of account for each consumer receiving debt management services; [PL 1999, c. 560, §3 (NEW).]

B. Remit funds received from or on behalf of a consumer to the consumer's creditor or creditors within 15 business days of receipt of the funds; and [PL 1999, c. 560, §3 (NEW).]

C. Correct or remedy any misdirected payments resulting from an error by the debt management service provider and reimburse the consumer for any actual costs or fees imposed by a creditor as a result of such misdirection. [PL 1999, c. 560, §3 (NEW).]

[PL 1999, c. 560, §3 (NEW).]

3. Commingling of funds. The debt management service provider may not commingle trust accounts established for the benefit of consumers with any operating accounts of the debt management service provider.

[PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW).

§6176. Requirement for written agreement

1. Written agreement. A debt management service provider may not perform debt management services for a consumer unless the consumer and the debt management service provider have first executed a written agreement with regard to the debt management services to be provided. A copy of the completed agreement must be given to the consumer.

[PL 1999, c. 560, §3 (NEW).]

2. Required provisions. Each agreement between a consumer and a debt management service provider must be dated and signed by the consumer and must include the following:

A. The name and address of the consumer and the debt management service provider and the state registration number of the debt management service provider; [PL 1999, c. 560, §3 (NEW).]

B. A full description of the services to be performed for the consumer, any fees to be charged to the consumer for such services and any contributions, fees or charges the consumer has agreed to make or pay to the debt management service provider in accordance with the limitation on fees provided in section 6174-A; [PL 2007, c. 36, §10 (AMD).]

C. Disclosure of the existence of the surety bond on file with the State pursuant to section 6174 and a notice that the consumer may contact the Bureau of Consumer Credit Protection with any questions or complaints regarding the debt management service provider; [PL 1999, c. 560, §3 (NEW); PL 2007, c. 273, Pt. B, §5 (REV); PL 2007, c. 695, Pt. A, §47 (AFF).]

D. The identification of the supervised financial organization where funds remitted by a consumer for payment to one or more creditors will be held; [PL 1999, c. 560, §3 (NEW).]

E. The right of a party to cancel the agreement by providing a written notice of cancellation to the other party; [PL 1999, c. 560, §3 (NEW).]

F. A complete list of the consumer's obligations that are subject to the agreement and the names and addresses of the creditors holding those obligations and a disclosure of whether or not the consumer's obligations are individual obligations of the consumer alone or joint obligations of the consumer and a spouse or other member of the consumer's household; [PL 2007, c. 36, §11 (AMD).]

G. A full description and schedule of the periodic amounts to be remitted to the debt management service provider for payment to the consumer's creditor or creditors and the amounts to be remitted to each creditor; [PL 1999, c. 560, §3 (NEW).]

H. A notice to the consumer that by executing the agreement the consumer authorizes the supervised financial organization to disclose financial records relating to the trust account in which the consumer's funds are held pursuant to section 6175 to the administrator during the course of any examination of the debt management service provider by the administrator; and [PL 1999, c. 560, §3 (NEW).]

I. The following notice:

NOTICE TO CONSUMER: Do not sign this agreement before you read it. You must be given a copy of this agreement. [PL 1999, c. 560, §3 (NEW).]

[PL 2007, c. 36, §§10, 11 (AMD); PL 2007, c. 273, Pt. B, §5 (REV); PL 2007, c. 695, Pt. A, §47 (AFF).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW). PL 2007, c. 36, §§10, 11 (AMD). PL 2007, c. 273, Pt. B, §5 (REV). PL 2007, c. 273, Pt. B, §7 (AFF). PL 2007, c. 695, Pt. A, §47 (AFF).

§6177. Reports and records

1. Written reports to consumers. A debt management service provider shall provide to each consumer receiving debt management services periodic written reports accounting for funds received from the consumer for payment to the consumer's creditor or creditors whose obligations are listed in the consumer's agreement with the debt management service provider and disbursements made to each such creditor on the consumer's behalf since the last report. The debt management service provider shall provide such reports to the consumer not less than once each calendar quarter.

[PL 1999, c. 560, §3 (NEW).]

2. Maintenance of records. A debt management service provider shall maintain books and records for each consumer for whom it provides debt management services for 6 years following the final transaction with the consumer.

[PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW).

§6178. Powers and functions of administrator

The administrator may exercise the following powers and functions. [PL 1999, c. 560, §3 (NEW).]

1. Complaint investigation. The administrator may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases, including cases involving violations under section 6173 or 6175 or Title 17, section 701, to the Attorney General, who shall appear for and represent the administrator in court.
[PL 1999, c. 560, §3 (NEW).]

2. Rules. The administrator may adopt rules to carry out the requirements of this chapter in accordance with Title 5, chapter 375. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.
[PL 1999, c. 560, §3 (NEW).]

3. Examinations. The administrator may examine the books, accounts and records of any debt management service provider, make an investigation to determine compliance with this chapter and charge the reasonable expenses necessarily incurred to conduct the examinations to the debt management service provider.
[PL 1999, c. 560, §3 (NEW).]

4. Appropriation of funds. The administrator may appropriate for the use of the administrator the aggregate of fees, examination expense reimbursement or other payments made to the administrator pursuant to this chapter and carry forward any balance of funds from a fiscal year to be expended for the same purpose in the following fiscal year.
[PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW).

§6179. Prohibited acts

A debt management service provider may not: [PL 1999, c. 560, §3 (NEW).]

1. Purchase debt. Purchase any debt or obligation of a consumer;
[PL 1999, c. 560, §3 (NEW).]

2. Lend money. Lend money or provide credit to any consumer;
[PL 1999, c. 560, §3 (NEW).]

3. Mortgage interest . Obtain a mortgage or other security interest in property of a consumer;
[PL 1999, c. 560, §3 (NEW).]

4. Debt collector. Operate as a debt collector in this State, as defined in section 11002, subsection 6; or
[PL 1999, c. 560, §3 (NEW).]

5. Negative amortization. Structure an agreement for the consumer that, at the conclusion of the projected term for the consumer's participation in the debt management service agreement, would result in negative amortization of any of the consumer's obligations to creditors.
[PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW).

§6180. Advertising

1. False advertising. A debt management service provider may not engage in this State in false or misleading advertising concerning the terms and conditions of any services or assistance offered. [PL 1999, c. 560, §3 (NEW).]

2. Dissemination; no liability. This section does not impose liability on the owner or personnel of any medium in which an advertisement appears or through which an advertisement is disseminated. [PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW).

§6181. Effects of violations on rights of parties

1. Violations; unfair, unconscionable or deceptive practices. A debt management service provider that violates any provision of this chapter or any rule adopted by the administrator or that through any unfair, unconscionable or deceptive practice causes actual damage to a consumer is subject to enforcement action pursuant to subsection 2. [PL 1999, c. 560, §3 (NEW).]

2. Enforcement actions. The following enforcement actions may be taken by the administrator or an aggrieved consumer against a debt management service provider for violations of any provision of this chapter or any rule adopted pursuant to this chapter or for unfair, unconscionable or deceptive practices that cause actual damage to a consumer:

A. After notice and hearing, a cease and desist order from the administrator; [PL 1999, c. 560, §3 (NEW).]

B. When in the opinion of the administrator immediate action is required to protect the public interest, a cease and desist order without prior notice and hearing after which the administrator shall afford an opportunity for a hearing, the results of which are subject to review under Title 5, chapter 375, subchapter VII; [PL 1999, c. 560, §3 (NEW).]

C. After notice and hearing, forfeiture of such portion of the required bond as proportionately may make aggrieved parties whole; [PL 1999, c. 560, §3 (NEW).]

D. A civil action by the administrator through the Attorney General, after which a court may assess a civil penalty payable to the State of not more than \$5,000; [PL 1999, c. 560, §3 (NEW).]

E. A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the debt management service provider in an amount determined by the court plus costs of the action together with reasonable attorney's fees; or [PL 1999, c. 560, §3 (NEW).]

F. Revocation, suspension or nonrenewal of the debt management service provider's registration pursuant to section 6182. [PL 1999, c. 560, §3 (NEW).]

[PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW).

§6182. Suspension or revocation of registration

1. Suspension or revocation. After notice and hearing, the administrator may suspend or revoke a debt management service provider's registration if the administrator finds that one of the conditions of subsection 2 is met. [PL 1999, c. 560, §3 (NEW).]

2. Conditions for suspension or revocation. The following conditions are grounds for suspension or revocation of a registration:

A. A fact or condition exists that, if it had existed at the time when the registrant applied for registration, would have been grounds for denying the application; [PL 1999, c. 560, §3 (NEW).]

B. The registrant knowingly violates a material provision of this chapter or rule or order validly adopted by the administrator under authority of this chapter; [PL 1999, c. 560, §3 (NEW).]

C. The registrant is insolvent; [PL 1999, c. 560, §3 (NEW).]

D. The registrant refuses to permit the administrator to make an examination authorized by this chapter; or [PL 1999, c. 560, §3 (NEW).]

E. The registrant fails to respond within a reasonable time and in an appropriate manner to communications from the administrator. [PL 1999, c. 560, §3 (NEW).]

[PL 1999, c. 560, §3 (NEW).]

SECTION HISTORY

PL 1999, c. 560, §3 (NEW).

§6183. Debt management services related to residential mortgage loans

A person that engages in debt management services as described in section 6172, subsection 2, paragraph D related to a consumer's residential mortgage loan shall comply with the requirements of this chapter governing debt management service providers, subject to the following conditions and provisions. [PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

1. Good faith and fair dealing. A person subject to this section shall act in good faith and with fair dealing in any transaction, practice or course of business in connection with the providing of debt management services.

[PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

2. Training. With respect to section 6174-B, training leading to certification of the counselor must relate to subject matter specific to such activity, including but not limited to the tax consequences to the consumer of forgiven debt, the consumer's options for discharge of debt, including but not limited to the availability of bankruptcy, and all other options available to the consumer. The consumer education program must also include information about the tax consequences of forgiven debt.

[PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

3. Written reports. With respect to section 6177, subsection 1, the periodic written reports must consist of written updates provided to the consumer on at least a quarterly basis as well as a final accounting provided to the consumer.

[PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

4. Exceptions. Section 6179, subsections 1 and 3 do not apply to the provisions of this section.

[PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

5. Disclosure. If the service to be provided to the consumer includes the sale or transfer of an interest in real property:

A. The consumer's right to cancel the agreement by providing a written notice of cancellation to the other party pursuant to section 6176, subsection 2, paragraph E is effective only until the date of consummation of the transfer; [PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

B. The debt management service provider must provide the consumer with the names and contact information for 3rd-party housing counselors approved by the United States Department of Housing and Urban Development; and [PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

C. The debt management service provider must specifically advise the consumer in writing whether the consumer will be liable for a deficiency or not liable for a deficiency resulting from the sale or transfer. [PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]
[PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

6. Damages. In addition to any other remedies available to the consumer, a consumer has a right to recover consequential damages from the debt management service provider for a violation of this section.
[PL 2009, c. 327, §1 (NEW); PL 2009, c. 327, §2 (AFF).]

SECTION HISTORY

PL 2009, c. 327, §1 (NEW). PL 2009, c. 327, §2 (AFF).

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