

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

DEBT MANAGEMENT

Filed with the secretary of state on September 3, 2020

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of insurance and financial services by section 22 of the debt management act, 1975 PA 148, MCL 451.432)

R 451.1229, R 451.1231, R 451.1232, and R 451.1244 of the Michigan Administrative Code are rescinded, and R 451.1221, R 451.1222, R 451.1223, R 451.1225, R 451.1226, R 451.1227, R 451.1228, R 451.1233, R 451.1234, R 451.1235, R 451.1236, R 451.1237, R 451.1238, R 451.1239, R 451.1240, R 451.1241, R 451.1242, R 451.1243, and R 451.1245 are amended, as follows:

R 451.1221 Definitions.

Rule 1. As used in these rules:

- (a) "Act" means the debt management act, 1975 PA 148, MCL 451.411 to 451.437.
- (b) "Certified counselor" means that term as defined in section 2(b) of the act, MCL 451.412.
- (c) "Department" means the department of insurance and financial services.
- (d) "Firm" means a debt management licensee or exempt person.
- (e) "Monthly amortizable amount" means the payment made in equal monthly amounts, extinguishing the fees and charges stated in the contract, less the \$50.00 initial fee. No more than 1 monthly fee may be taken in any calendar month.
- (f) "Rate" means the percentage of a firm's fees or charges in relation to the debt to be liquidated during the life of the contract.

R 451.1222 Application for license or exemption order; renewal application.

Rule 2. (1) The application for license or exemption order must be on the form prescribed by the department.

(2) The application must be accompanied by the financial statements of the applicant for its last fiscal year and as of a date not more than 45 days prior to the filing.

(3) Financial statements, for the purposes of this rule, must include a balance sheet and income statement prepared in accordance with generally accepted accounting principles.

(4) Payment of fees must be made by a check payable to the "State of Michigan."

(5) The original application must be accompanied by a business history form for each officer and director if an association or corporation, for each partner if a partnership, for each member if a limited liability company, and for each proprietor, counselor, and officer manager. A credit report on the firm must also be submitted.

April 8, 2020

(6) A firm that has operated without interruption during the past year under a license or exemption order pursuant to section 4(2) of the act, MCL 451.414, may file a renewal application on the form prescribed by the department.

(7) The application must request a license or exemption order for each location from which the business of debt management is conducted.

(8) In the event of a change of business form, a new application must be filed prior to the effective date of the change. The application must include payment of a new fee as on renewal application.

(9) The department shall not accept for filing an application with a name that would cause confusion with the name of an existing firm or governmental agency or cause confusion about services to be received from a licensee.

R 451.1223 Amended application.

Rule 3. (1) A proposed change of name of a firm must be filed with the department for approval prior to effecting the change. The department shall not accept a name change that would be confusing with the name of an existing firm or governmental agency, or cause confusion about services to be received from a licensee. An amended application must be filed contemporaneously with the name change.

(2) A firm shall file an amended application with the department within 5 days of the occurrence of any of the following:

- (a) If a firm is a corporation, a change in its officers or directors.
- (b) If a firm is a partnership, a change in its partners.
- (c) If a firm is a sole proprietorship, a change in ownership.
- (d) If a firm is limited liability company, a change in its members.
- (e) Conviction of an officer, director, partner, member, or sole proprietor of the firm of a felony or misdemeanor involving moral turpitude.
- (f) Insolvency, filing in bankruptcy, receivership, or assignment for the benefit of creditors of the licensee.

(3) If a firm transfers its debt management business to another office at a different address, its license applies to its new office only if the following requirements are met:

- (a) The department amends its application to reflect the effective date of the transfer.
- (b) The firm ceases to conduct debt management business at the old address on the date indicated, and has notified its clients of the change of address not less than 5 days prior to the change.
- (c) The surety company has notified the department that the bond furnished pursuant to the act applies in full force and effect to the new office after the date of the transfer.
- (d) The firm has submitted its license certificate or order to the department for reissuance to cover the new office, and the license or order has been so reissued.

(4) The firm shall promptly file an amended application upon the occurrence of any material event affecting the accuracy of the information contained in the current application.

(5) If the partnership agreement of a firm provides for the substitution, withdrawal, or addition of partners of the partnership without winding up the partnership business, it is not necessary to obtain a new license or exemption order because of substitutions, withdrawals, or additions if evidence satisfactory to the department is furnished as to the following:

- (a) That the surety bond furnished pursuant to the act shall continue in full force and effect.
- (b) The financial responsibility, experience, character, and general fitness of new partners. The licensee shall furnish an executed business history form for each new partner.
- (c) That the withdrawal or substitution of new partners will not render the partnership insolvent.
- (d) That at least 2/3 in number and interest of those who were partners when the license was applied for and issued are continuing as partners of the partnership, or that 1 of the original partners remains in a 2-person partnership and a new partner is added simultaneously with the departure of original partner.
- (6) A change in the ownership of a sole proprietorship firm terminates the license and requires the filing of a new application and the issuance of a new license before continuance of the debt management business.
- (7) If the firm seeks to open an additional branch office, it shall amend its current application to reflect the address of the additional office and the name of the office manager. The licensee or exempted person shall file the appropriate forms with the department and pay the statutory fee.

R 451.1225 Notice of termination of bond.

Rule 5. If a surety company gives 30 days' notice of termination of a bond, the firm, if continuing in the debt management business, shall furnish a satisfactory new bond before the expiration of the 30 days. Failure to maintain a bond is cause for issuance of a summary suspension order.

R 451.1226 Debt management contract; budget analysis format; creditors agreement form.

Rule 6. (1) The applicant shall file a copy of its proposed debt management contract for debtors at the time of filing its application for review and acceptance by the department.

(2) The applicant shall file a copy of its proposed budget analysis format with the department.

(3) A true copy of the budget analysis must be provided to each debtor before a contract is signed.

(4) The applicant shall file a copy of its proposed creditor's agreement form with the department.

R 451.1227 Books and records.

Rule 7. The firm shall make and keep current the following books and records relating to its business:

(a) Journals or other records of original entry containing an itemized daily record of all payments and receipts for, or on behalf of, debtors of the firm, all receipts and disbursements of cash, and all other debits and credits.

(b) Ledgers or other records reflecting all assets, liabilities, income, expense, and capital accounts.

(c) Ledger accounts or other records, itemizing separately as to each debtor all receipts from the debtor, payments to the firm, and disbursements on behalf of the debtor, the

creditor's representative contacted, the response obtained or whether there has been a response within 14 days after the mailing of the creditor consent form, any revised or special conditions or arrangements conditioning the consent, and the date at which the required consents were secured.

(d) A complaint file containing copies of all written complaints made to the firm by debtors.

(e) Personnel files for all employees, listing name, current home address, home phone number, social security number, and a record of all compensation.

R 451.1228 Financial reports; audit.

Rule 8. (1) The department may at any time require the filing of special financial or other operational reports if it finds that such filing is in the public interest and for the protection of debtors.

(2) If a firm services more than 100 debtors, an audit is required of the firm annually. The audit must be done pursuant to an approved audit plan submitted by an independent accountant and accepted by the department in writing.

R 451.1229 Rescinded.

R 451.1231 Rescinded.

R 451.1232 Rescinded.

R 451.1233 Renewal applications.

Rule 13. Renewal applications must be filed with the department by December 1 of each year. Failure to file by that date will result in the expiration of the license or order.

R 451.1234 Dishonest or unethical business conduct.

Rule 14. Dishonest or unethical business conduct, as provided in section 9 of the act, MCL 451.419, includes, but is not limited to, the following:

(a) Failure to promptly refund a debtor's money upon written cancellation of a contract.

(b) Borrowing money from a debtor.

(c) Giving preference to creditors for the convenience or benefit of the firm rather than the primary benefit of the debtor.

(d) Receiving money from the debtor, except as provided in the contract with the debtor, which contract has been accepted as to form and content by the department.

(e) Failing to promptly record on the books of the firm any transaction involving funds of the debtor.

(f) Paying funds of a debtor to a fictitious creditor.

(g) Accepting a rebate, kickback, or other remuneration for payment of a debtor's obligations, except under a plan approved by the department and fully disclosed to the debtor.

(h) Using debtors' funds as compensating balances for loans.

(i) Making erasures or changes on the portion of the client account card used for recording payments received from the debtor, on checks issued to creditors, on fees taken, or on the dates

of such entries. If a correction is needed, the error must have 1 line drawn through it and be initialed by an individual authorized by the licensee who did not make the correction or change. All entries must be made with ink, be typewritten, or be made by other machine entry.

R 451.1235 Posting statutory provision, address, and phone number; filing fee schedule and amendments thereto.

Rule 15. (1) The firm shall prominently post at each business location and website the provisions of sections 13(1) and (2), 14(1), and 18 of the act, MCL 451.423, 451.424, and 451.428, as well as the address and phone number of the department.

(2) The firm shall annually file with the department its fee schedule or a schedule of its range of fees, and shall file amendments to that schedule 5 days prior to any change in fees charged to the debtor.

R 451.1236 Employment qualifications.

Rule 16. Except as approved by the administrator, a firm shall not knowingly employ as an office manager or counselor a person who has done any of the following:

(a) Been convicted of a crime involving moral turpitude, which includes forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other like offense.

(b) Violated or failed to comply with a provision of the act, or a rule or order promulgated or issued pursuant to the act.

(c) Had a license to engage in the business of debt management revoked or suspended in this state or another state for any reason other than failure to pay licensing fees.

(d) Defaulted in the payment of money collected for others, including the discharge of debts, because of bankruptcy proceedings. The director of the department may, at his or her discretion, waive this restriction if provided with evidence of justifiable cause for the bankruptcy, plus convincing evidence of the fitness of the bankrupt party to carry out his or her functions under the act.

R 451.1237 Procedures; review.

Rule 17. (1) Each firm shall prepare and maintain a manual detailing the procedures for compliance with the act.

(2) Each certified counselor of the firm shall be provided with the manual.

R 451.1238 License.

Rule 18. (1) A license must be issued for each main office and branch office rendering debt management service.

(2) Whenever a licensee or exempt person discontinues the business of debt management, whether totally or at a specific location, the license certificate, or exemption order, must be mailed to the department within 5 days. An explanation of the reason for discontinuance, a statement of any amounts remaining in the client trust account, and the plan and timetable for disbursement must accompany the license certificate, or exemption

order, unless all accounts are transferred, without interruption in service, to another of the firm's branches.

(3) A license must not be terminated for a firm unless it is revoked or unless all payments due creditors or debtors have been made, and the department issues an order terminating the license.

R 451.1239 Budget analysis.

Rule 19. (1) A copy of the budget analysis must be retained in the debtor's file for a period of 6 years after the last transaction.

(2) The budget analysis must be signed by a certified counselor of the firm who participated in the preparation of the analysis.

R 451.1240 Certification of compliance.

Rule 20. (1) Every contract must set forth, in bold type, the set-up and cancellation fee provisions and amounts, and advise the prospective client to note these carefully before signing the contract.

(2) The department may approve the accumulation of debtor's funds in payment of obligations which are required to be paid in large lump sums, such as income and property taxes, insurance premiums, and house payments. All such accumulations, however, must be designated for a specific purpose and must not be used to pay for fees and charges, including the close out fee of the firm.

R 451.1241 Reconciliation.

Rule 21. (1) The trust account reconciliation must contain provisions for recording and identifying the balance in each debtor's account, the balance from the bank statement, the check number and amount of each outstanding check, the date and amount of deposits not yet credited by the bank, the reconciled bank balance, the balance from the checkbook, and a detailed breakdown of any differences.

(2) Remedial action, as provided in section 15(5) of the act, MCL 451.425, must be either an immediate replacement of funds, or an immediate cessation of business until sufficient funds are placed in the account.

R 451.1242 Statement of disbursements.

Rule 22. The statement prepared in compliance with section 16(1)(e) of the act, MCL 451.426, must be prepared as of a date no earlier than the date of the first full distribution to creditors under the contract.

R 451.1243 Separate remuneration prohibition; waiver or modification.

Rule 23. All requests for waiver or modification of the separate remuneration prohibition of section 19(h) of the act, MCL 451.429, must be made in writing to the, setting forth in detail the need for such waiver or modification; the persons or entities from which

the benefit will be solicited or sought; the amount or percentage of contribution solicited from donors in the capacity of creditor for a debtor; any relationship, affiliation, or connection creating an actual or potential conflict of interest between the parties involved; and any reciprocal arrangements made or to be made. The department shall examine the proposal promptly and shall, within 15 days, notify the licensee or exempted person of its decision, or of the necessity for additional information. All such decisions must be in writing and must give the effective date of the declaratory ruling.

R 451.1244 Rescinded.

R 451.1245 Charges for other services.

Rule 25. (1) A firm or affiliate thereof shall not charge a debtor for any services or goods, or make other charges, unless the firm or affiliate has filed with the department a plan setting forth the basis of charges, and the department has determined that such charges in the future do not result in an excessive fee in violation of section 18 of the act, MCL 451.428.

(2) If a firm or affiliate thereof proposes to alter its plan of charges, the amended plan must be filed with the department and approved prior to use.