

**PROPOSED REGULATION OF
THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R050-10

May 27, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-6, 8-12, 15 and 18-24, NRS 676A.730; §§7 and 14, NRS 676A.320 and 676A.730; §13, NRS 676A.370, 676A.730 and 676A.750; §16, NRS 676A.730 and 676A.750; §17, NRS 676A.730 and 676A.740.

A REGULATION relating to debt-management services; requiring the Commissioner of Financial Institutions to post on the Internet certain information relating to certified counselors; establishing certain requirements for registered providers of debt-management services; requiring certain applicants for registration as providers of debt-management services to provide certain information; prohibiting registered providers from engaging in certain activities; requiring a registered provider to make certain disclosures before an individual assents to an agreement for debt-management services; establishing certain fees to be charged to registered providers for any examination conducted pursuant to the Uniform Debt-Management Services Act; establishing application fees for registration as a provider of debt-management services; establishing procedures and fees for the renewal and reinstatement of a registration as a provider of debt-management services; establishing a base year for the adjustment of certain dollar amounts for inflation; specifying certain failures as material violations; establishing certain procedures for the issuance of an order by the Commissioner to a person to cease and desist from engaging in certain activities; establishing certain provisions relating to contested hearings; repealing certain provisions relating to debt adjusting; and providing other matters properly relating thereto.

Section 1. Chapter 676A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 22, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Division” means the Division of Financial Institutions of the Department of Business and Industry.*

Sec. 4. *“Registered provider” means a provider that is registered pursuant to chapter 676A of NRS.*

Sec. 5. *The Commissioner will post on a website maintained by the Commissioner on the Internet the training programs and certifying organizations that the Commissioner has approved to certify an individual as a certified counselor.*

Sec. 6. *If a registered provider provides debt-management services at a location in this State, the registered provider must:*

1. Have regular business hours at that location during which a customer may enter and may communicate and conduct business with the registered provider in person;

2. Post conspicuously all disclosures required pursuant to this chapter and chapter 676A of NRS in a place visible to all customers entering that location; and

3. Maintain at that location the books and records from business conducted at that location. If the registered provider conducts business at a single location in this State, the registered provider must maintain at that location the books and records from all business conducted in this State unless the registered provider receives from the Commissioner approval to maintain the books and records at an alternate location.

Sec. 7. *Every individual applicant, every officer, director and natural person who is a holder or owner of at least 10 percent of the voting stock of a corporate applicant, and every member of a firm or partnership applicant for registration must submit proof satisfactory to the Commissioner that the person:*

1. Is a citizen of the United States or lawfully entitled to remain and work in the United States.

2. Has a good reputation for honesty, trustworthiness and integrity and is competent to transact the business of a registered provider in a manner which protects the interests of the general public.

3. Has not had a registration issued under chapter 676A of NRS suspended or revoked within the 10 years immediately preceding the date of the application.

4. Has not been convicted of, or entered a plea of nolo contendere to:

(a) A felony relating to the provision of debt-management services; or

(b) Any crime involving fraud, misrepresentation or moral turpitude.

5. Has not made a false statement of material fact on the application.

Sec. 8. *A registered provider shall not:*

1. Include in any written agreement:

(a) A promise by the customer to hold the registered provider harmless; or

(b) A waiver of any claim or defense arising out of the agreement or a waiver of any

provision of this chapter or chapter 676A of NRS. The provisions of this paragraph do not apply to the extent preempted by federal law.

2. Engage in any deceptive trade practice, as defined in chapter 598 of NRS, including, without limitation, making a false representation.

3. Advertise or permit to be advertised in any manner any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for debt-management services.

4. Use or attempt to use any agent, affiliate or subsidiary to avoid the requirements or prohibitions of this chapter or chapter 676A of NRS.

Sec. 9. Before an individual assents to an agreement, the registered provider shall make the disclosures described in paragraph (a) of subsection 8 of NRS 676A.730.

Sec. 10. 1. The Commissioner will charge and collect a fee of \$100 per hour from each registered provider for any examination of the registered provider conducted pursuant to chapter 676A of NRS.

2. The Commissioner will bill each registered provider upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 10 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a registered provider to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of the registration of the provider.

Sec. 11. An application submitted pursuant to NRS 676A.310 must be accompanied by:

1. A nonrefundable fee of \$2,000; and

2. A fee of \$1,000, prorated on the basis of the licensing year as provided by the

Commissioner.

Sec. 12. 1. A registration as a provider expires on June 30 of each year.

2. A registered provider shall pay annually to the Division a fee of \$1,500 for the renewal of the registration of the provider.

3. *If the Commissioner reinstates an expired registration, the registered provider shall pay a reinstatement fee of \$1,500 in addition to the renewal fee prescribed in subsection 2.*

Sec. 13. 1. *A provider may continue to provide debt-management services after the expiration of the provider's registration issued pursuant to chapter 676A of NRS if:*

(a) *The provider ceases to be registered solely due to the expiration of the provider's registration;*

(b) *Not later than 10 days after the date the registration expires, the provider submits to the Commissioner a request for an extension; and*

(c) *Not later than 30 days after the provider requests the extension, the provider submits all fees, documents and information required by the Commissioner for reinstatement of the registration.*

2. *The Commissioner will not reinstate a registration that has expired if a provider:*

(a) *Has failed to request an extension; or*

(b) *Requested an extension but failed to submit all fees, documents and information required by the Commissioner pursuant to paragraph (c) of subsection 1 and the Commissioner did not grant another extension.*

3. *If the Commissioner does not reinstate a registration pursuant to subsection 2, the provider must apply for and be issued a new registration before the provider may provide debt-management services.*

4. *It is the duty of the registered provider to renew in a timely manner a registration issued pursuant to this chapter and chapter 676A of NRS. A lack of notice from the Division to any person concerning the expiration of a registration or the need to renew a registration is not a justification or excuse for the failure of the person to renew a registration in a timely*

manner and does not constitute grounds for the waiver of any of the requirements of this chapter or chapter 676A of NRS.

Sec. 14. 1. *A registered provider shall not conduct business under the provider's registration unless:*

(a) The registered provider possesses each license and permit required by this State or a local government as a condition to conducting business; and

(b) Each location where the registered provider conducts business complies with the provisions of all applicable planning and zoning ordinances.

2. *A registered provider shall not provide debt-management services in this State from any location that is not identified in the registered provider's application for registration pursuant to subsection 3 of NRS 676A.320.*

Sec. 15. 1. *Pursuant to subsection 6 of NRS 676A.730, the year 2010 is hereby adopted for the purposes of adjusting dollar amounts pursuant to that subsection.*

2. *The Commissioner will:*

(a) Post the dollar amounts for each year on the Internet; and

(b) Make the dollar amounts available in print form upon request.

Sec. 16. *For the purposes of paragraph (b) of subsection 1 of NRS 676A.750, a material violation includes, without limitation, the failure by a registered provider to pay a fee or assessment imposed by any provision of this chapter or chapter 676A of NRS.*

Sec. 17. 1. *An order issued by the Commissioner pursuant to NRS 676A.740 to cease and desist from engaging in an activity in violation of the provisions of this chapter or chapter 676A of NRS must:*

(a) Be in writing;

(b) State that:

(1) In the opinion of the Commissioner, the person ordered to cease and desist has engaged in an activity:

(I) For which the person is not registered as required by chapter 676A of NRS; or

(II) In a manner that violates the provisions of this chapter or chapter 676A of NRS;

and

(2) The person who receives the order has 30 days from the date of the order to file a verified petition with the Division for a contested hearing; and

(c) Be delivered by certified mail to the person ordered to cease and desist. For the purposes of this paragraph, proof of an attempt to deliver the order by certified mail to the last known address of the person is sufficient to establish that service was complete.

2. A record of the alleged acts which constitute grounds for issuing an order to cease and desist must be retained by the Division.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 676A of NRS after the person receives the order unless the order is suspended or rescinded.

4. Not later than 30 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the Division to request a contested hearing. If a petition for a contested hearing is received by the Division within the prescribed time, the Commissioner or the Commissioner's designee will hold a contested hearing. The order to cease and desist shall be deemed final if the Division does not receive a verified petition for a contested hearing within the prescribed time.

5. *An order to cease and desist may be amended or rescinded at any time before or during a contested hearing.*

6. *Subject to the discretion of the Commissioner or the Commissioner's designee, a contested hearing may be continued if:*

(a) *An amendment to an order materially alters the facts or legal issues relating to the order; or*

(b) *A person who receives an amendment to an order demonstrates an inability to prepare for the hearing as a result of the amendment.*

7. *The decision of the Commissioner or the Commissioner's designee after the hearing is a final decision of the Division for the purposes of judicial review.*

Sec. 18. 1. *A party to a hearing may compel the attendance of witnesses in the party's behalf at the hearing upon making a request to the Commissioner or the Commissioner's designee and designating the name and address of the person to be served with a subpoena.*

2. *A witness required to appear at a hearing before the Commissioner or the Commissioner's designee is entitled to receive from the party calling the witness the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.*

Sec. 19. 1. *A person contesting an order by the Commissioner or the Commissioner's designee has the burden of showing that the order was not based upon substantial evidence.*

2. *The Commissioner or the Commissioner's designee is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that the hearing must be conducted pursuant to the provisions of chapter 233B of NRS.*

3. *A copy of the evidence introduced before or during a contested hearing must be filed with the Division.*

Sec. 20. *The Commissioner or the Commissioner's designee may:*

- 1. Conduct hearings;*
- 2. Question witnesses;*
- 3. Make rulings on motions and objections; and*
- 4. Issue findings of fact or conclusions of law at the conclusion of the case.*

Sec. 21. *If a party fails to appear at a hearing scheduled by the Commissioner or the Commissioner's designee and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a determination by the Commissioner or the Commissioner's designee, as applicable, that proper notice was given, the Commissioner or the Commissioner's designee, as applicable, may proceed to consider the case without the participation of the absent party and may dispose of the matter on the basis of the evidence before it. If the respondent fails to appear at the hearing or fails to reply to the notice, the alleged acts specified in the order may be considered as true.*

Sec. 22. *1. A party may call any other party or witness as an adverse witness. The party may question such a witness as if conducting a cross-examination.*

2. A party who is surprised by the testimony of a witness, called in good faith as a witness on the party's behalf, may question the witness as if conducting a cross-examination.

Sec. 23. NAC 676.005, 676.010, 676.020, 676.030, 676.040, 676.050 and 676.060 are hereby repealed.

Sec. 24. This section and sections 1 to 23, inclusive, of this regulation become effective upon the later of:

1. July 1, 2010; or

2. The date this regulation is filed with the Secretary of State.

TEXT OF REPEALED SECTIONS

676.005 “Licensee” defined. (NRS 676.070) As used in this chapter, unless the context otherwise requires, “licensee” means any person, firm, company or corporation who is licensed under this chapter and chapter 676 of NRS.

676.010 Fee for supervision and related activities: Amount; collection; failure to pay. (NRS 658.101)

1. The Commissioner of Financial Institutions will charge and collect a fee of \$50 per hour from each debt adjusting company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 676 of NRS.

2. The Commissioner will bill each debt adjusting company upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a debt adjusting company to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

676.020 Annual assessments to cover costs related to performance of audits and examinations. (NRS 658.055)

1. Except as otherwise provided in NAC 658.030, each person licensed to engage in the business of debt adjusting shall pay to the Division of Financial Institutions of the Department of Business and Industry an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.

2. The Division will bill each licensee for the assessment. The assessment must be paid within 30 days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any licensee whose assessment is received by the Division after the date on which the assessment is due.

676.030 Fees: Application for license. (NRS 676.130) An application submitted pursuant to NRS 676.120 must be accompanied by:

1. A nonrefundable fee of \$375; and
2. A fee of \$300, prorated by the Commissioner of Financial Institutions.

676.040 Fees: Renewal of license; reinstatement of expired license. (NRS 676.160)

1. A licensee shall pay annually to the Division of Financial Institutions of the Department of Business and Industry a fee of \$400 for the renewal of his license.

2. If the Commissioner of Financial Institutions reinstates an expired license, the licensee shall pay a reinstatement fee of \$300 in addition to the renewal fee prescribed in subsection 1.

676.050 Prerequisites to engaging in business. (NRS 676.110) A person shall not engage in the business of debt adjusting in this State unless:

1. He possesses each license, certificate and permit required by this chapter, chapter 676 of NRS and any local governmental entities; and

2. The location of the licensed office complies with any applicable planning and zoning ordinances.

676.060 Suspension or revocation of license. (NRS 676.290) The Commissioner of Financial Institutions may suspend or revoke a license in accordance with NRS 676.270 to 676.310, inclusive, if a licensee violates any provision of this chapter or chapter 676 of NRS, including, without limitation, a provision that imposes a fee or assessment on a licensee.