

CHAPTER 13-07 CONSUMER CREDIT COUNSELING SERVICES

13-07-01. Consumer credit counseling service - Definition.

As used in this chapter, "consumer credit counseling service" means a nonprofit corporation whose agreements contemplate that a debtor will liquidate the debtor's debts by structured installments or that a creditor will reduce finance charges or fees for late payments, default, or delinquency. For purposes of this chapter, a nonprofit corporation means an entity that is:

1. Organized and properly operating as a nonprofit entity under the laws of the state in which it was formed;
2. Exempt from taxation under the federal Internal Revenue Code [26 U.S.C. 501]; and
3. Not owned, operated, managed by, or affiliated with a for-profit entity.

13-07-02. Consumer credit counseling service - Contract requirements.

Any agreement between a consumer credit counseling service and a debtor for counseling and assistance must be in writing and signed by both parties. The consumer credit counseling service shall give the debtor a copy of the signed agreement. The agreement must disclose the total amount that may be retained by the consumer credit counseling service if the contract is fully performed, the terms upon which the debtor may cancel the contract, and all debts that are to be managed by the counseling service, including the name of each creditor and the amount of each debt. A consumer credit counseling service may not enter an agreement with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and that the debtor will be benefited by the plan.

13-07-03. Consumer credit counseling service - Surety bond or other security.

A consumer credit counseling service entering an agreement with a debtor who resides in this state shall file with the attorney general a surety bond or other security in an amount equal to the largest sum accrued in the service's trust account during the prior year, or five thousand dollars, whichever is greater. The bond or other security must be payable to the state of North Dakota and must be acceptable to the attorney general for the use and benefit of debtors making payments to a consumer credit counseling service and suffering damages caused by the consumer credit counseling service.

13-07-04. Consumer credit counseling service - Trust accounts.

A consumer credit counseling service shall deposit in a trust account in a financial institution, within one business day of receipt, any payments received from or on behalf of a debtor. A debtor's payments must be identifiable in the trust account. Funds in the trust account may not be commingled with any other funds. The consumer credit counseling service shall credit any interest accrued as a result of payments deposited in a trust account to debt management education programs.

13-07-05. Consumer credit counseling service - Accounting records - Availability of statements.

A consumer credit counseling service shall maintain books, records, and accounts in a manner that allows the attorney general to determine compliance with the law. A consumer credit counseling service shall prepare a weekly statement of all receipts and disbursements, including payments received from or on behalf of a debtor, disbursements made on behalf of the debtor, fees collected, and funds held in escrow. The consumer credit counseling service shall make available to each debtor, upon request, a copy of the debtor's statement of account. All books, records, and accounts must be retained by a consumer credit counseling service for at least six years after the final entry of any recorded transaction.

13-07-06. Fees - Payments - Cancellation.

A consumer credit counseling service may charge an origination fee of up to fifty dollars, which may be subtracted from the initial amount paid by the debtor to the counseling service.

The consumer credit counseling service may withdraw and retain as partial payment of the service's total fee up to fifteen percent of any sum deposited by the debtor for distribution. The remainder must be disbursed to the listed creditors in accordance with the parties' agreement. Disbursement must be made within forty-five days after deposit by the debtor. Before an automatic termination, either party may cancel the agreement without cause upon giving to the other party thirty days' written notice of an intent to cancel. In the event of a cancellation, the consumer credit counseling service shall notify the debtor's creditors within thirty days.

13-07-07. Prohibitions - Investigation - Civil penalty.

A consumer credit counseling service may not take a confession of judgment or a power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceeding. The attorney general may, upon the attorney general's own motion, and shall, upon receipt of a complaint, investigate any alleged violation of law by a consumer credit counseling service. For that purpose, the attorney general may subpoena witnesses, administer oaths, take testimony, and require the production of books, documents, and other records. The attorney general may institute a civil action in the name of the state in the district court for an injunction prohibiting any practice in violation of this chapter. The court, upon notice to the defendant of not less than five days, and upon proof that the defendant has engaged in a practice in violation of this chapter may enjoin the defendant from engaging in any practice in violation of this chapter. In addition, the court may impose a civil penalty not to exceed five thousand dollars for each violation of this chapter. The attorney general may recover costs and disbursements, including the costs of investigation and reasonable attorney's fees.