

Chapter 18.28 RCW
DEBT ADJUSTING

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RCW 18.28.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Debt adjuster," which includes any person known as a debt pooler, debt manager, debt consolidator, debt prorater, or credit counselor, is any person engaging in or holding himself or herself out as engaging in the business of debt adjusting for compensation. The term shall not include:

(a) Attorneys-at-law, escrow agents, accountants, broker-dealers in securities, or investment advisors in securities, while performing services solely incidental to the practice of their professions;

(b) Any person, partnership, association, or corporation doing business under and as permitted by any law of this state or of the United States relating to banks, consumer finance businesses, consumer loan companies, trust companies, mutual savings banks, savings and loan associations, building and loan associations, credit unions, crop credit associations, development credit corporations, industrial development corporations, title insurance companies, insurance companies, or third-party account administrators;

(c) Persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt adjusting, perform credit services for their employer;

(d) Public officers while acting in their official capacities and persons acting under court order;

(e) Any person while performing services incidental to the dissolution, winding up or liquidation of a partnership, corporation, or other business enterprise;

(f) Nonprofit organizations dealing exclusively with debts owing from commercial enterprises to business creditors;

(g) Nonprofit organizations engaged in debt adjusting and which do not assess against the debtor a service charge in excess of fifteen dollars per month.

(2) "Debt adjusting" means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor.

(3) "Debt adjusting agency" is any partnership, corporation, or association engaging in or holding itself out as engaging in the business of debt adjusting.

(4) "Fair share" means the creditor contributions paid to nonprofit debt adjusters by the creditors whose consumers receive debt adjusting services from the nonprofit debt adjusters and pay down their debt accordingly. "Fair share" does not include grants received by nonprofit debt adjusters for services unrelated to debt adjusting.

(5) "Financial institution" means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.

(6) "Third-party account administrator" means an independent entity that holds or administers a dedicated bank account for fees and payments to creditors, debt collectors, debt adjusters, or debt adjusting agencies in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt. [2015 c 167 s 1. Prior: 2012 c 56 s 1; 1999 c 151 s 101; 1979 c 156 s 1; 1970 ex.s. c 97 s 1; 1967 c 201 s 1.]

Information—Report—2012 c 56: See note following RCW 19.230.350.

Part headings not law—1999 c 151: "Part headings used in this act are not any part of the law." [1999 c 151 s 2401.]

Effective date—1999 c 151: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 151 s 2402.]

Effective date—1979 c 156: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1979." [1979 c 156 s 14.]

Severability—1979 c 156: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 c 156 s 13.]

RCW 18.28.080 Fees for debt adjusting services—Limitations—Requirements. (1) By contract a debt adjuster may charge a reasonable fee for debt adjusting services. The total fee for debt adjusting services, including, but not limited to, any fee charged by a financial institution or a third-party account administrator, may not exceed fifteen percent of the total debt listed by the debtor on the contract. The fee retained by the debt adjuster from any one payment made by or on behalf of the debtor may not exceed fifteen percent of

the payment not including fair share contributions to a nonprofit debt adjuster. The debt adjuster may make an initial charge of up to twenty-five dollars which shall be considered part of the total fee. If an initial charge is made, no additional fee may be retained which will bring the total fee retained to date to more than fifteen percent of the total payments made to date. No fee whatsoever shall be applied against rent and utility payments for housing.

In the event of cancellation or default on performance of the contract by the debtor prior to its successful completion, the debt adjuster may collect in addition to fees previously received, six percent of that portion of the remaining indebtedness listed on said contract which was due when the contract was entered into, but not to exceed twenty-five dollars.

(2) A debt adjuster shall not be entitled to retain any fee until notifying all creditors listed by the debtor that the debtor has engaged the debt adjuster in a program of debt adjusting.

(3) The department of financial institutions has authority to enforce compliance with this section. [2015 c 167 s 2; 2012 c 56 s 2; 1999 c 151 s 102; 1979 c 156 s 4; 1967 ex.s. c 141 s 2; 1967 c 201 s 8.]

Information—Report—2012 c 56: See note following RCW 19.230.350.

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

RCW 18.28.090 Excess charges—Contract void—Return of payments.

If a debt adjuster contracts for, receives or makes any charge in excess of the maximums permitted by this chapter, except as the result of an accidental and bona fide error, the debt adjuster's contract with the debtor shall be void and the debt adjuster shall return to the debtor the amount of all payments received from the debtor or on the debtor's behalf and not distributed to creditors. [1999 c 151 s 103; 1967 c 201 s 9.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

RCW 18.28.100 Contract requirements. Every contract between a debt adjuster and a debtor shall:

(1) List every debt to be handled with the creditor's name and disclose the approximate total of all known debts;

(2) Provide in precise terms payments reasonably within the ability of the debtor to pay;

(3) Disclose in precise terms the rate and amount of all of the debt adjuster's charges and fees;

(4) Disclose the approximate number and amount of installments required to pay the debts in full;

(5) Disclose the name and address of the debt adjuster and of the debtor;

(6) Provide that the debt adjuster shall notify the debtor, in writing, within five days of notification to the debt adjuster by a creditor that the creditor refuses to accept payment pursuant to the contract between the debt adjuster and the debtor;

(7) Contain the following notice in ten point boldface type or larger directly above the space reserved in the contract for the signature of the buyer: NOTICE TO DEBTOR:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may cancel this contract within three days of signing by sending notice of cancellation by certified mail return receipt requested to the debt adjuster at his or her address shown on the contract, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the contract; and

(8) Contain such other and further provisions or disclosures as are necessary for the protection of the debtor and the proper conduct of business by the debt adjuster. [1999 c 151 s 104; 1979 c 156 s 5; 1967 c 201 s 10.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

RCW 18.28.110 Debt adjuster—Functions required to be performed.

Every debt adjuster shall perform the following functions:

(1) Make a permanent record of all payments by debtors, or on the debtors' behalf, and of all disbursements to creditors of such debtors, and shall keep and maintain in this state all such records, and all payments not distributed to creditors. No person shall intentionally make any false entry in any such record, or intentionally mutilate, destroy or otherwise dispose of any such record. Such records shall at all times be open for inspection by the attorney general or the attorney general's authorized agent, and shall be preserved as original records or by microfilm or other methods of duplication for at least six years after making the final entry therein.

(2) Deliver a completed copy of the contract between the debt adjuster and a debtor to the debtor immediately after the debtor executes the contract, and sign the debtor's copy of such contract.

(3) Unless paid by check or money order, deliver a receipt to a debtor for each payment within five days after receipt of such payment.

(4) Distribute to the creditors of the debtor at least once each forty days after receipt of payment during the term of the contract at least eighty-five percent of each payment received from the debtor.

(5) At least once every month render an accounting to the debtor which shall indicate the total amount received from or on behalf of the debtor, the total amount paid to each creditor, the total amount which any creditor has agreed to accept as payment in full on any debt owed the creditor by the debtor, the amount of charges deducted, and

any amount held in trust. The debt adjuster shall in addition render such an account to a debtor within ten days after written demand.

(6) Notify the debtor, in writing, within five days of notification to the debt adjuster by a creditor that the creditor refuses to accept payment pursuant to the contract between the debt adjuster and the debtor. [1999 c 151 s 105; 1979 c 156 s 6; 1967 c 201 s 11.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

RCW 18.28.120 Debt adjuster—Prohibited acts. A debt adjuster shall not:

(1) Take any contract, or other instrument which has any blank spaces when signed by the debtor;

(2) Receive or charge any fee in the form of a promissory note or other promise to pay or receive or accept any mortgage or other security for any fee, whether as to real or personal property;

(3) Lend money or credit;

(4) Take any confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceedings;

(5) Take, concurrent with the signing of the contract or as a part of the contract or as part of the application for the contract, a release of any obligation to be performed on the part of the debt adjuster;

(6) Advertise services, display, distribute, broadcast or televise, or permit services to be displayed, advertised, distributed, broadcasted or televised in any manner whatsoever wherein any false, misleading or deceptive statement or representation with regard to the services to be performed by the debt adjuster, or the charges to be made therefor, is made;

(7) Offer, pay, or give any cash, fee, gift, bonus, premiums, reward, or other compensation to any person for referring any prospective customer to the debt adjuster;

(8) Receive any cash, fee, gift, bonus, premium, reward, or other compensation, other than fair share contributions to a nonprofit debt adjuster, from any person other than the debtor or a person in the debtor's behalf in connection with his or her activities as a debt adjuster; or

(9) Disclose to anyone the debtors who have contracted with the debt adjuster; nor shall the debt adjuster disclose the creditors of a debtor to anyone other than: (a) The debtor; or (b) another creditor of the debtor and then only to the extent necessary to secure the cooperation of such a creditor in a debt adjusting plan. [2015 c 167 s 3; 1999 c 151 s 106; 1967 c 201 s 12.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

RCW 18.28.130 Legal services—Rendering or obtaining—Using name of attorney—Prohibited. Without limiting the generality of the foregoing and other applicable laws, the debt adjuster, manager or an employee of the debt adjuster shall not:

(1) Prepare, advise, or sign a release of attachment or garnishment, stipulation, affidavit for exemption, compromise agreement or other legal or court document, nor furnish legal advice or perform legal services of any kind;

(2) Represent that he or she is authorized or competent to furnish legal advice or perform legal services;

(3) Assume authority on behalf of creditors or a debtor or accept a power of attorney authorizing it to employ or terminate the services of any attorney or to arrange the terms of or compensate for such services; or

(4) Communicate with the debtor or creditor or any other person in the name of any attorney or upon the stationery of any attorney or prepare any form or instrument which only attorneys are authorized to prepare. [1999 c 151 s 107; 1967 c 201 s 13.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

RCW 18.28.140 Assignment of wages not prohibited. Nothing in this chapter shall be construed as prohibiting the assignment of wages by a debtor to a debt adjuster, if such assignment is otherwise in accordance with the law of this state. [1999 c 151 s 108; 1967 c 201 s 14.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

RCW 18.28.150 Trust account for payments by debtor—Disbursements. (1) Any payment received by a debt adjuster from or on behalf of a debtor shall be held in trust by the debt adjuster from the moment it is received. The debt adjuster shall not commingle such payment with the debt adjuster's own property or funds, but shall maintain a separate trust account and deposit in such account all such payments received. All disbursements whether to the debtor or to the creditors of the debtor, or to the debt adjuster, shall be made from such account.

(2) In the event that the debtor cancels or defaults on the contract between the debtor and the debt adjuster, the debt adjuster shall close out the debtor's trust account in the following manner:

(a) The debt adjuster may take from the account that amount necessary to satisfy any fees, other than any cancellation or default fee, authorized by this chapter.

(b) After deducting the fees provided in subsection (2)(a) of this section, the debt adjuster shall distribute the remaining amount in the account to the creditors of the debtor. The distribution shall be made within five days of the demand therefor by the debtor, but if the debtor fails to make the demand, then the debt adjuster shall make the distribution within thirty days of the date of cancellation or default. [1999 c 151 s 109; 1979 c 156 s 8; 1967 c 201 s 15.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

RCW 18.28.165 Investigations. For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the office of the attorney general may at any time: Investigate the debt adjusting business and examine the books, accounts, records, and files used; have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of debt adjusters; and require the attendance of and examine under oath all persons whomsoever whose testimony might be required relative to such debt adjusting business or to the subject matter of any examination, investigation, or hearing. [1999 c 151 s 110; 1979 c 156 s 7.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

RCW 18.28.180 Administrative procedure act to govern administration. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable herein, govern the rights, remedies, and procedures respecting the administration of this chapter. [1967 c 201 s 18.]

RCW 18.28.185 Violations—Unfair practice under chapter 19.86 RCW. A violation of this chapter constitutes an unfair or deceptive act or practice in the conduct of trade or commerce under chapter 19.86 RCW. [1979 c 156 s 10.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

RCW 18.28.190 Violations—Penalty. Any person who violates any provision of this chapter or aids or abets such violation, or any rule lawfully adopted under this chapter or any order made under this chapter, is guilty of a misdemeanor. [1999 c 151 s 111; 1967 c 201 s 19.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

RCW 18.28.200 Violations—Injunctions. Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person

to restrain and prevent any violation of this chapter. [1967 c 201 s 20.]

RCW 18.28.210 Violations—Assurance of discontinuance—Effect.

The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter in the enforcement thereof from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in the alternative, in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided for in RCW 18.28.200: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney. [2011 c 336 s 476; 1967 c 201 s 21.]

RCW 18.28.220 Violation of injunction—Civil penalty.

Any person who violates any injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1967 c 201 s 22.]

RCW 18.28.800 Nonprofit or exempt organizations—Report. (1)

Any nonprofit organization engaged in debt adjusting in this state or exempt from this chapter pursuant to RCW 18.28.010(1)(g) shall provide the following information to the department of financial institutions in a form prescribed by the department by June 30, 2016, and again on June 30, 2017:

(a) The number and percentage of Washington debtors for whom the debt adjuster provides or provided debt adjusting services in the previous year who became inactive in, canceled, or terminated those services without settlement of all of the debtor's debts, by year of enrollment;

(b) The total fees collected from Washington debtors during the previous year;

(c) The total fair share contributions collected from creditors of Washington debtors during the previous year;

(d) For each debtor for whom the debt adjuster provides debt adjusting services:

(i) The date of contracting;

(ii) The number of debts included in the contract between the debt adjuster and the debtor;

(iii) The principal amount of each debt at the time the contract was signed;

(iv) The source of each debtor's obligation, categorized as credit card, student loans, auto, medical, small loans under chapter 31.45 RCW, other secured debt, and other unsecured debt;

(v) Whether each debt is active, terminated, or settled;

(vi) If a debt has been settled, the settlement amount of the debt and the savings amount, calculated by subtracting the amount paid to settle the debt from the principal amount of the debt at the time the contract was signed; and

(vii) The total fees charged to the debtor and how the fees were calculated;

(e) For Washington debtors who became inactive in, canceled, or terminated debt adjuster services during the previous year, the number and percentage of debtors who, as measured by the aggregate amount of each debtor's enrolled debts:

(i) Settled zero percent of their enrolled debt;

(ii) Settled up to twenty-five percent of their enrolled debt;

(iii) Settled twenty-five percent to fifty percent of their enrolled debt;

(iv) Settled fifty-one percent to seventy-five percent of their enrolled debt;

(v) Settled seventy-six percent to ninety-nine percent of their enrolled debt;

(f) The number and percentage of Washington debtors for whom the debt adjuster provides or provided debt adjusting services in the previous three years who fully settled one hundred percent of their enrolled debt through those debt adjusting services, by year of enrollment; and

(g) (i) The nonprofit organization's form 990 submitted to the internal revenue service in the preceding year; or

(ii) A statement of previous year's base salary and other compensation of the nonprofit organization's officers, directors, trustees, and other employees and independent contractors receiving greater than one hundred fifty thousand dollars in total compensation, if the form 990 does not contain such information or if the organization did not submit a form 990 in the preceding year.

(2) The department of financial institutions shall make public and submit to the appropriate committees of the legislature a report summarizing the information received under subsection (1) of this section by December 1, 2016, and again on December 1, 2017. [2015 c 167 s 4.]

RCW 18.28.900 Saving prior contracts. The provisions of this chapter shall not invalidate or make unlawful contracts between debt adjusters and debtors executed prior to the effective date of this chapter. [1967 c 201 s 23.]

Effective date—1967 c 201: June 8, 1967, see preface to 1967 session laws.