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## **Debt Management and Credit Counseling Providers**

### **What Is The Uniform Debt-Management Services Act (UDMSA)?**

Between 2000 and 2003, the number of credit counseling and debt settlement services more than doubled due to the growing number of people needing help with debt. In 2005, bankruptcy code amendments began requiring credit counseling before filing Chapter 7 bankruptcy, while several states began requiring credit counseling in connection with high mortgages and payday loans. The National Conference of Commissioners on Uniform State Laws drafted the Uniform Debt-Management Services Act of 2005 to help regulate these businesses. The act addresses registration, bonding, disclosures, prerequisites for providing services, prohibited acts and practices, and penalties. Tennessee adopted the UDMSA on July 1, 2010.

### **Who Does This Act Cover?**

The UDMSA covers non-profit and for-profit companies that provide credit counseling and debt-management services.

### **What Is The Different Between A Credit Counseling And Debt Settlement Service?**

Credit counseling services generally help a consumer repay his or her debt, while debt management services negotiate with creditors to settle for less than the full amount of the consumer's debt.

### **What Does Tennessee Require For Registration Of A Debt-Management Service Company?**

A provider that wants to provide debt management services in Tennessee must meet 17 requirements, including maintaining a trust account for client funds, qualifying to do business in the State, providing evidence of accreditation, and providing thorough analyses of their financial and business practices.

## **When Can The Commission Of The Tennessee Department Of Commerce And Insurance Deny A Provider's Application To Provide Debt Management Services?**

The Commissioner may deny a provider's application when:

- The application contains information that is materially erroneous or incomplete,
- An officer, director, or owner has been convicted of a crime or suffered a civil judgment involving dishonesty or the violation of state or federal securities laws;
- Officers, directors, or owners of the company have defaulted in the payment of money collected for others,
- There is a finding that the company will not operate in compliance with the UDMSA, or
- There is any other violation of the UDMSA.

## **What Does The UDMSA Require Providers To Do Once They Are Licensed?**

Providers must:

- Have a toll-free phone line staffed during normal business hours that lets a customer speak to a certified counselor or customer service representative,
- Give customers an itemized list of goods and services and the charges for each, including the set-up fee, monthly service fee, and settlement fee,
- Reasonably educate certified counselors about the management of personal finances,
- Make specific disclosures to customers, including warnings about potential credit and tax consequences,
- Set up a trust account for all money paid to them for distribution to creditors, and
- Give a customer three days to cancel an agreement after signing.

Providers can also create an agreement to settle debts for 50 cents on the dollar. However, for a settlement of 50% or less of debt forgiven, the provider must have the permission of the customer after the creditor has agreed to a settlement. If the provider makes a deal to settle more than 50% of the debt, they do not need the customer's permission to take the settlement.

# What Does The UDMSA Say About Fees And Other Charges?

The UDMSA limits fees and charges on customers, including:

- All debt education and counseling must be free. The only exception is that providers can charge for certain government programs that require participation in education or counseling.
- A credit-counseling agency can charge a set-up fee of \$50.
- A debt settlement company can charge a set-up fee as long as it is no more than 4% of the amount you owe, but they can never charge more than \$400.
- A customer who is only receiving educational and counseling services may be charged a fee no more than \$100.
- A provider that provides both debt-management and debt settlement services can only charge one set-up fee.
- A debt settlement provider may charge a settlement fee of 30% of the amount the customer didn't have to pay to the creditor.
- If you are in bankruptcy and the judge allows the debtor to get nonprofit budget and credit counseling from a nonprofit agency, providers are required to provide services without regard to the ability of the customer to pay the fee.

# What Does The UDMSA Prohibit?

Companies cannot:

- Misuse funds held in trust for a customer
- Act on behalf of a customer after the customer has ended the agreement
- Compensate employees based on the number of customers enrolled into agreements
- Perform legal services or give legal advice
- Purchase a customer's debt
- Disclose the identity or identifying information of the customer or his or her creditors
- Charge or receive payment for debt-management services until the provider and the customer have signed an agreement
- Charge or receive payment of any fee after the provider and customer have signed an agreement to pay less than the amount of debt owed unless and until the provider has:
  - Renegotiated, settled, or reduced the terms of at least 1 debt or
  - Customer has made at least 1 payment pursuant to the settlement agreement

# How Does Tennessee Enforce The UDMSA?

Enforcement of the UDMSA occurs at two levels, the administrator and the customer level.

- The administrator can:
  - Investigate,
  - Tell the provider to stop doing something illegal, and/or
  - Sue.
- A customer may:
  - Bring a civil lawsuit for damages,
  - Void an agreement if they believe the provider has charged illegal fees or received money from or on behalf of the customer without authorization.

## **Who Do I Contact To Report A Violation Of The UDMSA?**

To submit a complaint regarding Equifax, Experian, or TransUnion, file a complaint online with the Consumer Financial Protection Bureau at <https://www.consumerfinance.gov/complaint/> or by phone at (855) 411-2372.

For other companies, send a complaint to the State of Tennessee, Division of Regulatory Boards online at <https://www.tn.gov/commerce/resources-services/file-a-complaint.html>, and choose either the Debt Management Category or the Credit Service Business Category, or call the Tennessee Department of Commerce and Insurance at (615) 741-2241.

You can also file a complaint online with the Federal Trade Commission at <https://www.ftccomplaintassistant.gov/GettingStarted?NextQID=24&Url=%23%26panel1-8#crnt>

You can check the license of a Credit Service Business or Debt Management Service company in Tennessee at <http://verify.tn.gov/>.

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