

September 2010

Introduced by

1 A BILL for an Act to create and enact chapter 13-11 of the North Dakota Century Code, relating
2 to the regulation of debt settlement providers; to amend and reenact subsection 1 of section
3 6-01-01.1 of the North Dakota Century Code, relating to the financial institutions regulatory
4 fund; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 1 of section 6-01-01.1 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 1. There is hereby created a special fund designated as the financial institutions
9 regulatory fund. The amounts received under the following chapters, and any
10 other moneys received by the department of financial institutions, must be
11 deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 13-04.1, 13-05,
12 13-08, 13-09, ~~and~~ 13-10, and 13-11.

13 **SECTION 2.** Chapter 13-11 of the North Dakota Century Code is created and enacted
14 as follows:

15 **13-11-01. Definitions.** For the purposes of this chapter:

- 16 1. "Affiliate":
17 a. With respect to an individual, means:
18 (1) The spouse of the individual;
19 (2) A sibling of the individual or the spouse of a sibling;
20 (3) An individual or the spouse of an individual who is a lineal ancestor or
21 lineal descendant of the individual or the individual's spouse;
22 (4) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,
23 grandniece, or grandnephew, whether related by the whole or the half
24 blood or adoption, or the spouse of any of them; or

- 1 (5) Any other individual occupying the residence of the individual; and
- 2 b. With respect to an entity, means:
- 3 (1) A person that directly or indirectly controls, is controlled by, or is under
- 4 common control with the entity;
- 5 (2) An officer of, or an individual who performs similar functions with
- 6 respect to, the entity;
- 7 (3) A director of, or an individual who performs similar functions with
- 8 respect to, the entity;
- 9 (4) A person that receives or received more than twenty-five thousand
- 10 dollars from the entity in either the current year or the preceding year or
- 11 a person that owns more than ten percent of, or an individual who is
- 12 employed by or is a director of, a person that receives or received more
- 13 than twenty-five thousand dollars from the entity in either the current
- 14 year or the preceding year;
- 15 (5) An officer or director of, or an individual performing similar functions
- 16 with respect to, a person described in paragraph 1;
- 17 (6) The spouse of, or an individual occupying the residence of, an
- 18 individual described in paragraphs 1 through 5; or
- 19 (7) An individual who has the relationship specified in paragraph 4 of
- 20 subdivision a to an individual or the spouse of an individual described in
- 21 paragraphs 1 through 5.
- 22 2. "Commissioner" means the commissioner of the department of financial
- 23 institutions.
- 24 3. "Consumer" means any person who purchases or contracts for the purchase of
- 25 debt settlement services.
- 26 4. "Consumer settlement account" means any account or other means or device in
- 27 which payments, deposits, or other transfers from a consumer are arranged, held,
- 28 or transferred by or to a debt settlement provider for the accumulation of the
- 29 consumer's funds in anticipation of proffering an adjustment or settlement of a debt
- 30 or obligation of the consumer to a creditor on behalf of the consumer.

- 1 5. "Contract" means a contract or other legally binding agreement between a provider
2 and an individual for the performance of debt management services.
- 3 6. "Debt settlement provider" means any person engaging in, or holding itself out as
4 engaging in, the business of providing debt settlement service in exchange for any
5 fee or compensation, or any person who solicits for or acts on behalf of any person
6 engaging in, or holding itself out as engaging in, the business of providing debt
7 settlement service in exchange for any fee or compensation. "Debt settlement
8 provider" does not include:
- 9 a. An attorney licensed, or otherwise authorized, to practice in the state who is
10 engaged in the practice of law;
- 11 b. An escrow agent, accountant, broker-dealer in securities, or investment
12 advisor in securities, when acting in the ordinary practice of the person's
13 profession and through the entity used in the ordinary practice of the person's
14 profession;
- 15 c. Any bank, agent of a bank, operating subsidiary of a bank, affiliate of a bank,
16 trust company, savings and loan association, savings bank, credit union, crop
17 credit association, development credit corporation, industrial development
18 corporation, title insurance company, title insurance agent, independent
19 escrowee or insurance company operating or organized under the laws of a
20 state or the United States, or any other person authorized to make loans
21 under state law while acting in the ordinary practice of that business;
- 22 d. Any person who performs credit services for that person's employer while
23 receiving a regular salary or wage when the employer is not engaged in the
24 business of offering or providing debt settlement service;
- 25 e. A collection agency licensed pursuant to chapter 13-05 which is collecting a
26 debt on the collection agency's own behalf or on behalf of a third party;
- 27 f. A public officer while acting in the officer's official capacity and any person
28 acting under court order;
- 29 g. Any person while performing services incidental to the dissolution, winding up,
30 or liquidating of a partnership, corporation, or other business enterprise; or

1 h. Any person licensed under chapter 13-10 when acting in the ordinary practice
2 of that person's profession and not holding oneself out as a debt settlement
3 provider.

4 7. a. "Debt settlement service" means:

5 (1) Offering to provide advice or service, or acting as an intermediary
6 between or on behalf of a consumer and one or more of a consumer's
7 creditors, where the primary purpose of the advice, service, or action is
8 to obtain a settlement, adjustment, or satisfaction of the consumer's
9 unsecured debt to a creditor in an amount less than the full amount of
10 the principal amount of the debt or in an amount less than the current
11 outstanding balance of the debt; or

12 (2) Offering to provide services related to or providing services advising,
13 encouraging, assisting, or counseling a consumer to accumulate funds
14 for the primary purpose of proposing or obtaining or seeking to obtain a
15 settlement, adjustment, or satisfaction of the consumer's unsecured
16 debt to a creditor in an amount less than the full amount of the principal
17 amount of the debt or in an amount less than the current outstanding
18 balance of the debt.

19 b. "Debt settlement service" does not include:

20 (1) Legal services provided in an attorney-client relationship by an attorney
21 licensed or otherwise authorized to practice law in this state;

22 (2) Accounting services provided in an accountant-client relationship by a
23 certified public accountant licensed to provide accounting services in
24 this state; or

25 (3) Financial planning services provided in a financial planner-client
26 relationship by a member of a financial planning profession whose
27 members the commissioner, by rule, determines are:

28 (a) Licensed by this state;

29 (b) Subject to a disciplinary mechanism;

30 (c) Subject to a code of professional responsibility; and

31 (d) Subject to a continuing education requirement.

- 1 8. "Enrollment or setup fee" means any fee, obligation, or compensation paid or to be
2 paid by the consumer to a debt settlement provider in consideration of or in
3 connection with establishing a contract or other agreement with a consumer related
4 to the provision of debt settlement service.
- 5 9. "Maintenance fee" means any fee, obligation, or compensation paid or to be paid
6 by the consumer on a periodic basis to a debt settlement provider in consideration
7 of maintaining the relationship and services to be provided by a debt settlement
8 provider in accordance with a contract with a consumer related to the provision of
9 debt settlement service.
- 10 10. "Person" does not include a public corporation, government, or governmental
11 subdivision, agency, or instrumentality.
- 12 11. "Principal amount of the debt" means the total amount or outstanding balance
13 owed by a consumer to one or more creditors for a debt that is included in a
14 contract for debt settlement service at the time when the consumer enters a
15 contract for debt settlement service.
- 16 12. "Record" means information that is inscribed on a tangible medium or that is stored
17 in an electronic or other medium and is retrievable in perceivable form.
- 18 13. "Savings" means the difference between the principal amount of the debt and the
19 amount paid by the debt settlement provider to the creditor or negotiated by the
20 debt settlement provider and paid by the consumer to the creditor pursuant to a
21 settlement negotiated by the debt settlement provider on behalf of the consumer as
22 full and complete satisfaction of the creditor's claim with regard to that debt.
- 23 14. "Settlement fee" means any fee, obligation, or compensation paid or to be paid by
24 the consumer to a debt settlement provider in consideration of or in connection with
25 a completed agreement or other arrangement on the part of a creditor to accept
26 less than the principal amount of the debt as satisfaction of the creditor's claim
27 against the consumer.
- 28 15. "Willfully" means the person acted intentionally in the sense that the person was
29 aware of what the person was doing.

30 **13-11-02. License required.** It is unlawful for any person to act as a debt settlement
31 provider except as authorized by this chapter and without first having obtained a license under

1 this chapter. A person that engages in debt settlement is deemed to engage in debt settlement
2 in this state if the debtor resides in this state.

3 **13-11-03. Application for license.** Every application for a debt settlement provider
4 license, or for a renewal thereof, must be made upon forms designed and furnished by the
5 commissioner and must contain any information which the commissioner determines necessary
6 and proper. The commissioner may require any application to provide additional information
7 that is not requested on the application form. The applicant must register with the secretary of
8 state if so required.

9 **13-11-04. Fee and bond to accompany application for debt settlement license.**
10 The application for license must be in writing, under oath, and in the form prescribed by the
11 commissioner. The application must give the location where the business is to be conducted
12 and must contain any further information the commissioner requires, including the names and
13 addresses of the partners, officers, directors, trustees, and the principal owners or members, as
14 will provide the basis for the investigation and findings contemplated by section 13-11-03. At
15 the time of making the application, the applicant shall include payment in the sum of four
16 hundred dollars, which is not subject to refund, as a fee for investigating the application; the
17 sum of four hundred dollars for the annual license fee; and provide a surety bond in the sum of
18 fifty thousand dollars or an additional amount as required by the commissioner by rule. In
19 addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be
20 deposited in the financial institutions regulatory fund as provided under section 6-01-01.1.

21 **13-11-05. Qualifications for license.**

- 22 1. Upon the filing of the application, the approval of the bond, and the payment of the
23 specified fees, the commissioner may issue a license if the commissioner finds all
24 of the following:
- 25 a. The financial responsibility, experience, character, and general fitness of the
26 applicant, managers, partners, officers, and directors are such as to command
27 the confidence of the community and to warrant belief that the business will
28 be operated fairly, honestly, and efficiently within the purposes of this chapter.
 - 29 b. The applicant, managers, partners, officers, and directors have not been
30 convicted of a felony or a misdemeanor or disciplined with respect to a license

1 or are not currently the subject of a license disciplinary proceeding concerning
2 allegations involving dishonesty or untrustworthiness.

3 c. The applicant, managers, partners, officers, and directors have not had a
4 record of having defaulted in the payment of money collected for others,
5 including the discharge of those debts through bankruptcy proceedings.

6 d. The applicant or any managers, partners, officers, and directors previously
7 have not violated any provision of this chapter or any rule adopted by the
8 commissioner.

9 e. The applicant has not made any false statement or representation to the
10 commissioner in applying for a license under this chapter.

11 2. The commissioner shall deliver a license to the applicant to operate as a debt
12 settlement provider in accordance with this chapter at the location specified in the
13 application. The license remains in full force and effect until it is surrendered by
14 the debt settlement provider or revoked by the commissioner as provided in this
15 chapter; provided, however, that each license expires by its terms on December
16 thirty-first next following its issuance unless renewed as provided in this chapter. A
17 license may not be surrendered without the approval of the commissioner.

18 **13-11-06. Expiration and renewal of license.** All licenses required under this chapter
19 expire on December thirty-first of each year and may be renewed. Renewals are effective the
20 succeeding January first. Applications for renewal must be submitted at least thirty days before
21 the expiration of the license and must be accompanied by the required annual fees, which are
22 not subject to refund. The form and content of renewal applications must be determined by the
23 commissioner, and a renewal application may be denied upon the same grounds as would
24 justify denial of an initial application. If a licensee has been delinquent in renewing the
25 licensee's license, the commissioner may charge an additional fee of fifty dollars for the renewal
26 of the license. A debt settlement provider license is not transferable. If the commissioner
27 determines that an ownership change has occurred in a sole proprietorship, partnership, limited
28 liability partnership, corporation, or limited liability corporation that was previously granted a
29 debt settlement provider license, the commissioner may require a new application from the
30 purchaser. The application must be filed at least thirty days before the date on which the
31 change of ownership is consummated.

1 **13-11-07. Applicant's obligation to update information.** An applicant or registered
2 provider shall notify the commissioner within ten days after a change in the information provided
3 within the application.

4 **13-11-08. Records - Annual reports.**

- 5 1. Every licensee shall maintain records in conformity with generally accepted
6 accounting principles and practices in a manner that will enable the commissioner
7 to determine whether the licensee is complying with this chapter. The records of a
8 licensee may be maintained electronically provided all records can be reproduced
9 upon request of the commissioner and within the required statutory timeframe
10 outlined in this section.
- 11 2. Before August first of each year, the parent company of each licensee shall file
12 with the commissioner a composite annual report in the form prescribed by the
13 commissioner relating to services provided by licensees.

14 **13-11-09. Approval or denial of a license.** Any complete application for a license
15 must be approved or denied within sixty days after the filing of the complete application with the
16 commissioner.

17 **13-11-10. Revocation of license - Suspension of license - Surrender of license.**

- 18 1. If the commissioner has reason to believe that grounds for revocation of a license
19 exist, the commissioner may send by certified mail to the licensee a notice of
20 hearing stating the contemplated action and in general the grounds thereof and
21 setting the time and place for a hearing thereon. Grounds for revocation of a
22 license include:
- 23 a. Any debt settlement provider has failed to pay the annual license fee or to
24 maintain in effect the bond required under this chapter;
- 25 b. The debt settlement provider has violated this chapter or any rule lawfully
26 made by the commissioner implementing this chapter;
- 27 c. Any fact or condition exists that, if it had existed at the time of the original
28 application for a license, would have warranted the commissioner in refusing
29 its issuance; or
- 30 d. Any applicant has made any false statement or representation to the
31 commissioner in applying for a license under this chapter.

1 2. If the commissioner finds that probable cause for revocation of any license exists
2 and that enforcement of the chapter requires immediate suspension of that license
3 pending investigation, the commissioner, upon written notice, may enter an order
4 suspending that license for a period not exceeding thirty days, pending the holding
5 of a hearing as prescribed in this chapter.

6 3. Any licensee may surrender the licensee's license by delivering the license to the
7 commissioner with written notice of its surrender; however, surrender of the license
8 does not affect the licensee's civil or criminal liability for acts committed before the
9 surrender of the license.

10 **13-11-11. Suspension and removal of debt settlement provider officers and**
11 **employees.**

12 1. The commissioner may issue and serve upon a debt settlement provider officer or
13 employee, and upon the licensee involved, a complaint stating the basis for the
14 commissioner's belief that the officer or employee is willfully engaging or has
15 willfully engaged in any of the following conduct:

16 a. Violating a law, rule, order, or written agreement with the commissioner;

17 b. Engaging in harassment or abuse, the making of false or misleading
18 representations, engaging in unfair practices involving debt settlement, or
19 engaging in prohibited acts and practices under section 13-11-23; or

20 c. Performing an act of commission or omission or practice that is a breach of
21 trust or a breach of fiduciary duty.

22 2. The complaint must contain a notice of opportunity for hearing.

23 3. If a hearing is not requested within twenty days of the date the complaint is served
24 upon the officer or employee, or if a hearing is held and the commissioner finds
25 that the record so warrants, the commissioner may enter an order suspending or
26 temporarily removing the employee or officer from office for a period not exceeding
27 three years from the effective date of the suspension or temporary removal.

28 4. A contested or default suspension or temporary removal order is effective
29 immediately upon service of the order on the officer or employee and upon the
30 licensee. A consent order is effective as agreed. An officer or employee
31 suspended or temporarily removed from office pursuant to this section is not

1 eligible, while under suspension, for reinstatement to a position with a debt
2 settlement provider.
3 5. When an officer or employee, or other person participating in the conduct of the
4 affairs of a licensee is charged with a felony in state or federal court which involves
5 dishonesty or breach of trust, the commissioner immediately may suspend the
6 person from office or prohibit the person from further participation in the affairs of
7 the debt settlement provider, or both. The order is effective immediately upon
8 service of the order on the licensee and the person charged and remains in effect
9 until the criminal charge is finally disposed of or until modified by the
10 commissioner. If a judgment of conviction, federal pretrial diversion, or similar
11 state order or judgment is entered, the commissioner may order that the
12 suspension or prohibition be made permanent. A finding of not guilty or other
13 disposition of the charge does not preclude the commissioner from pursuing
14 administrative or civil remedies.

15 **13-11-12. Advertising and marketing practices.**

16 1. A debt settlement provider may not represent, expressly or by implication, any
17 results or outcomes of its debt settlement services in any advertising, marketing, or
18 other communication to consumers unless the debt settlement provider possesses
19 substantiation for the representation at the time the representation is made.
20 2. A debt settlement provider may not make, expressly or by implication, any unfair or
21 deceptive representations, or any omissions of material facts, in any of its
22 advertising or marketing communications concerning debt settlement services.
23 3. All advertising and marketing communications concerning debt settlement services
24 must disclose the following material information clearly and conspicuously:
25 Debt settlement services are not appropriate for everyone. Failure to pay your
26 monthly bills in a timely manner will result in increased balances and will harm your
27 credit rating. Not all creditors will agree to reduce principal balance, and they may
28 pursue collection, including lawsuits.

29 **13-11-13. Contracts, books, and records.**

30 1. Upon request, each debt settlement provider shall furnish to the commissioner a
31 copy of the contract entered between the debt settlement provider and the debtor.

1 The debt settlement provider shall furnish the debtor with a copy of the written
2 contract at the time of execution which sets forth the charges, if any, agreed upon
3 for the services of the debt settlement provider.

4 2. Each debt settlement provider shall maintain records and accounts that will enable
5 any debtor contracting with the debt settlement provider, at any reasonable time, to
6 ascertain the status of all the debtor's accounts with the debt settlement service
7 provider, including the amount of any fees paid by the debtor, amount held in trust,
8 if applicable, settlement offers made and received on each of the debtor's
9 accounts, and legally enforceable settlements reached with the debtor's creditors.
10 Within seven days after a request for that information by the debtor, the debt
11 settlement provider shall furnish a statement showing the total amount received
12 and the total disbursements to each creditor to any individual. Each debt
13 settlement provider shall issue a receipt for each payment made by the debtor at a
14 debt settlement provider office. Each debt settlement provider shall prepare and
15 retain in the file of each debtor a written analysis of the debtor's income and
16 expenses to substantiate that the plan of payment is feasible and practical.

17 **13-11-14. Trust funds - Requirements and restrictions.**

18 1. All funds received by a debt settlement provider or the provider's agent from and
19 for the purpose of paying bills, invoices, or accounts of a debtor constitute trust
20 funds owned by and belonging to the debtor from whom the funds were received.
21 All such funds received by the debt settlement provider must be separated from the
22 funds of the debt settlement provider not later than the end of the business day
23 following receipt by the debt settlement provider. All such funds must be kept
24 separate and apart at all times from funds belonging to the debt settlement
25 provider or any of its officers, employees, or agents and may be used for no
26 purpose other than paying bills, invoices, or accounts of the debtor. On or before
27 the close of the business day following receipt, all such trust funds received at the
28 main or branch offices of a debt settlement provider must be deposited in a bank in
29 an account in the name of the debt settlement provider-designated trust account,
30 or by some other appropriate name indicating that the funds are not the funds of
31 the debt settlement provider or its officers, employees, or agents.

- 1 2. Such funds are not subject to attachment, lien, levy of execution, or sequestration
2 by order of court except by a debtor for whom a debt settlement provider is acting
3 as an agent in paying bills, invoices, or accounts.
- 4 3. At least once every month, the debt settlement provider shall render an accounting
5 to the debtor that itemizes the total amount received from the debtor, the total
6 amount paid each creditor, the amount of charges deducted, and any amount held
7 in reserve, if applicable, and the status of each of the debtor's enrolled accounts.
8 In addition, a debt settlement provider shall provide such an accounting to a debtor
9 within seven days after written demand, but not more than three times per
10 six-month period.
- 11 4. This chapter does not require the establishment of a trust account if no consumer
12 funds other than earned settlement fees are held or controlled by a debt settlement
13 provider.

14 **13-11-15. Requirement of good faith.** A provider shall act in good faith in all matters
15 under this chapter.

16 **13-11-16. Customer service.** A provider that is required to be registered under this
17 chapter shall maintain a toll-free communication system, staffed at a level that reasonably
18 permits an individual to speak to a certified counselor or customer service representative, as
19 appropriate, during ordinary business hours.

20 **13-11-17. Required presale consumer disclosures and warnings.**

- 21 1. Before the consumer signs a contract, the debt settlement provider shall provide an
22 oral and written notice to the consumer that clearly and conspicuously discloses all
23 of the following:
- 24 a. Debt settlement services may not be suitable for all consumers.
- 25 b. Using a debt settlement service likely will harm the consumer's credit history
26 and credit score.
- 27 c. Using a debt settlement service does not stop creditor collection activity,
28 including creditor lawsuits and garnishments.
- 29 d. Not all creditors will accept a reduction in the balance, interest rate, or fees a
30 consumer owes.

- 1 e. The consumer should inquire about other means of dealing with debt,
2 including nonprofit credit counseling and bankruptcy.
- 3 f. The consumer remains obligated to make periodic or scheduled payments to
4 creditors while participating in a debt settlement plan, and that the debt
5 settlement provider will not make any periodic or scheduled payments to
6 creditors on behalf of the consumer.
- 7 g. The failure to make periodic or scheduled payments to a creditor is likely to:
8 (1) Harm the consumer's credit history, credit rating, or credit score;
9 (2) Lead the creditor to increase lawful collection activity, including
10 litigation, garnishment of the consumer's wages, and judgment liens on
11 the consumer's property; and
12 (3) Lead to the imposition by the creditor of interest charges, late fees, and
13 other penalty fees, increasing the principal amount of the debt.
- 14 h. The amount of time estimated to be necessary to achieve the represented
15 results.
- 16 i. The estimated amount of money or the percentage of debt the consumer must
17 accumulate before a settlement offer will be made to each of the consumer's
18 creditors.
- 19 j. A statement indicating that debt settlement providers are licensed and
20 regulated by the North Dakota department of financial institutions and any
21 complaints regarding the services of a debt settlement provider should be
22 directed to the North Dakota department of financial institutions, Bismarck,
23 North Dakota.
- 24 2. The consumer shall sign and date an acknowledgment form entitled "Consumer
25 Notice and Rights Form" that states: "I, the debtor, have received from the debt
26 settlement provider a copy of the form entitled "Consumer Notice and Rights
27 Form". The debt settlement provider or its representative also shall sign and date
28 the acknowledgment form, which includes the name and address of the debt
29 settlement services provider. The acknowledgment form must be in duplicate and
30 incorporated into the "Consumer Notice and Rights Form". The original
31 acknowledgment form must be retained by the debt settlement provider, and the

1 duplicate copy must be retained within the form by the consumer. If the
2 acknowledgment form is in electronic form, then the acknowledgment form must
3 contain the consumer disclosures required by section 101(c) of the federal
4 Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001(c)].
5 3. The requirements of this section are satisfied if the provider provides the following
6 warning verbatim, both orally and in writing, with the caption "CONSUMER
7 NOTICE AND RIGHTS FORM" in at least twenty-eight-point font and the remaining
8 portion in at least fourteen-point font to a consumer before the consumer signs a
9 contract for the debt settlement provider's services:

10 "CONSUMER NOTICE AND RIGHTS FORM

11 CAUTION

12 We CANNOT GUARANTEE that you successfully will reduce or eliminate your
13 debt. If you stop paying your creditors, there is a strong likelihood some or all of
14 the following may happen:

- 15 - CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- 16 - CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- 17 - YOUR WAGES OR BANK ACCOUNT STILL MAY BE GARNISHED.
- 18 - YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED.
- 19 - NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE REDUCTION.
- 20 - YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR
21 DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.
- 22 - THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR
23 IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY
24 FEES.
- 25 - EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED TO
26 PAY TAXES ON THE AMOUNT FORGIVEN.

27 YOUR RIGHT TO CANCEL

28 If you sign a contract with a Debt Settlement Provider, you have the right to cancel
29 at any time and receive a full refund of all unearned fees you have paid to the
30 provider and all funds placed in your settlement fund that have not been paid to
31 any creditors.

1 IF YOU ARE DISSATISFIED

2 OR YOU HAVE QUESTIONS

3 If you are dissatisfied with a debt settlement provider or have any questions,
4 please bring it to the attention of the North Dakota Department of Financial
5 Institutions, Bismarck, North Dakota.

6 I, the debtor, have received from the debt settlement provider a copy of the form
7 entitled Consumer Notice and Rights Form.

8 Signed: _____

9 Printed name: _____ "

10 **13-11-18. Individualized financial analysis.**

11 1. Before entering a written contract with a consumer, a debt settlement provider shall
12 prepare and provide to the consumer in writing and retain a copy of:

13 a. An individualized financial analysis, including the individual's income,
14 expenses, and debts; and

15 b. A statement containing a good-faith estimate of the length of time it will take to
16 complete the debt settlement program, the total amount of debt owed to each
17 creditor included in the debt settlement program, the total savings estimated
18 to be necessary to complete the debt settlement program, and the monthly
19 targeted savings amount estimated to be necessary to complete the debt
20 settlement program.

21 2. A debt settlement provider may not enter a written contract with a consumer unless
22 the debt settlement provider makes written determinations, supported by the
23 financial analysis, that:

24 a. The consumer can reasonably meet the requirements of the proposed debt
25 settlement program, including the fees and the periodic savings amounts set
26 forth in the savings goals; and

27 b. The debt settlement program is suitable for the consumer at the time the
28 contract is to be signed.

29 **13-11-19. Debt settlement contract.**

- 1 1. A debt settlement provider may not provide debt settlement service to a consumer
2 without a written contract signed and dated by both the consumer and the debt
3 settlement provider.
- 4 2. Any contract for the provision of debt settlement service entered in violation of this
5 section is void.
- 6 3. A contract between a debt settlement provider and a consumer for the provision of
7 debt settlement service must disclose all of the following clearly and conspicuously:
 - 8 a. The name and address of the consumer.
 - 9 b. The date of execution of the contract.
 - 10 c. The legal name of the debt settlement provider, including any other business
11 names used by the debt settlement provider.
 - 12 d. The corporate address and regular business address, including a street
13 address, of the debt settlement provider.
 - 14 e. The telephone number at which the consumer may speak with a
15 representative of the debt settlement provider during normal business hours.
 - 16 f. A complete list of the consumer's accounts, debts, and obligations to be
17 included in the provision of debt settlement service, including the name of
18 each creditor and principal amount of each debt.
 - 19 g. A description of the services to be provided by the debt settlement provider,
20 including the expected timeframe for settlement for each account, debt, or
21 obligation included in subdivision f.
 - 22 h. An itemized list of all fees to be paid by the consumer to the debt settlement
23 provider, and the date, approximate date, or circumstances under which each
24 fee will become due.
 - 25 i. A good-faith estimate of the total amount of all fees and compensation, not to
26 exceed the amounts specified in section 13-11-21 of this chapter, to be
27 collected by the debt settlement provider from the consumer for the provision
28 of debt settlement service contemplated by the contract.
 - 29 j. A statement of the proposed savings goals for the consumer, stating the
30 amount to be saved per month or other period, time period over which savings

1 goals extend, and the total amount of the savings expected to be paid by the
2 consumer pursuant to the terms of the contract.

3 k. The amount of money or the percentage of debt the consumer must
4 accumulate before a settlement offer will be made to each of the consumer's
5 creditors.

6 l. The written individualized financial analysis required by section 13-11-18.

7 m. The contents of the "Consumer Notice and Rights Form" provided in section
8 13-11-17.

9 n. A written notice to the consumer that the consumer may cancel the contract at
10 any time until after the debt settlement provider has fully performed each
11 service the debt settlement provider contracted to perform or represented that
12 the debt settlement provider would perform, and upon that event:

13 (1) The consumer is entitled to a full refund of all unearned fees and
14 compensation paid by the consumer to the debt settlement provider,
15 and a full refund of all funds provided by the consumer to the debt
16 settlement provider for a consumer settlement account, except for funds
17 actually paid to a creditor on behalf of the consumer, under the terms of
18 the contract for debt settlement service; and

19 (2) All powers of attorney granted to the debt settlement provider by the
20 consumer must be considered revoked and voided.

21 o. A form the consumer may use to cancel the contract pursuant to the
22 provisions of section 13-11-20. The form must include the name and mailing
23 address of the debt settlement provider and shall disclose clearly and
24 conspicuously how the consumer can cancel the contract, including applicable
25 addresses, telephone numbers, facsimile numbers, and electronic mail
26 addresses the consumer can use to cancel the contract.

27 4. If a debt settlement provider communicates with a consumer primarily in a
28 language other than English, then the debt settlement provider shall furnish to the
29 consumer a translation of all the disclosures and documents required by this
30 chapter in that other language.

31 **13-11-20. Cancellation of contract and right to fee and settlement fund refunds.**

- 1 1. A consumer may cancel a contract with a debt settlement provider at any time
2 before the debt settlement provider has performed fully each service the debt
3 settlement provider contracted to perform or represented that the debt settlement
4 provider would perform.
- 5 2. If a consumer cancels a contract with a debt settlement provider, or at any time
6 upon a material violation of this chapter on the part of the debt settlement provider,
7 the debt settlement provider shall refund all fees and compensation, with the
8 exception of the application fee and any earned settlement fee, as well as all funds
9 paid by the consumer to the debt settlement provider that have accumulated in a
10 consumer settlement account and that the debt settlement provider has not
11 disbursed to creditors. Upon cancellation, all powers of attorney and direct debit
12 authorizations granted to the debt settlement provider by the consumer are
13 considered revoked and voided.
- 14 3. A debt settlement provider shall make any refund required under this section within
15 seven days after the notice of cancellation and shall include with the refund a full
16 statement of account showing fees received, fees refunded, savings held,
17 payments to creditors, settlement fees earned, if any, and savings refunded.
- 18 4. Upon the cancellation of a contract under this section, the debt settlement provider
19 shall provide timely notice of the cancellation of the contract to each of the
20 creditors with whom the debt settlement provider has had any prior communication
21 on behalf of the consumer in connection with the provision of any debt settlement
22 service.

23 **13-11-21. Fees.**

- 24 1. A debt settlement provider may not charge fees of any type or receive
25 compensation from a consumer in a type, amount, or timing other than fees or
26 compensation permitted in this section.
- 27 2. A debt settlement provider may not charge or receive from a consumer any
28 enrollment fee, setup fee, upfront fee of any kind, or any maintenance fee, except
29 for a one-time enrollment fee of no more than one hundred dollars.
- 30 3. A debt settlement provider may charge a settlement fee that may not exceed an
31 amount greater than fifteen percent of the savings. If the amount paid by the debt

1 settlement provider to the creditor or negotiated by the debt settlement provider
2 and paid by the consumer to the creditor pursuant to a settlement negotiated by
3 the debt settlement provider on behalf of the consumer as full and complete
4 satisfaction of the creditor's claim with regard to that debt is greater than the
5 principal amount of the debt, the debt settlement provider is not entitled to any
6 settlement fee.

7 4. A debt settlement provider may not collect any settlement fee from a consumer
8 until a creditor enters into a legally enforceable agreement to accept funds in a
9 specific dollar amount as full and complete satisfaction of the creditor's claim with
10 regard to that debt and those funds are provided by the debt settlement provider on
11 behalf of the consumer or are provided directly by the consumer to the creditor
12 pursuant to a settlement negotiated by the debt settlement provider.

13 **13-11-22. Voluntary contributions.** A provider may not solicit a voluntary contribution
14 from an individual or an affiliate of the individual for any service provided to the individual. A
15 provider may accept voluntary contributions from an individual but, until thirty days after
16 completion or termination of a plan, the aggregate amount of money received from or on behalf
17 of the individual may not exceed the total amount the provider may charge the individual under
18 section 13-11-21.

19 **13-11-23. Prohibited acts and practices.**

20 1. A provider directly or indirectly may not:
21 a. Misappropriate or misapply money held in trust;
22 b. Settle a debt on behalf of an individual for more than fifty percent of the
23 principal amount of the debt owed a creditor, unless the individual assents to
24 the settlement after the creditor has assented;
25 c. Take a power of attorney that authorizes the provider to settle a debt, unless
26 the power of attorney expressly limits the provider's authority to settle debts
27 for not more than fifty percent of the principal amount of the debt owed a
28 creditor;
29 d. Exercise or attempt to exercise a power of attorney after an individual has
30 terminated a contract;

- 1 e. Initiate a transfer from an individual's account at a bank or with another
2 person unless the transfer is:
3 (1) A return of money to the individual; or
4 (2) Before termination of a contract, properly authorized by the contract
5 and this chapter, and for:
6 (a) Payment to one or more creditors pursuant to a plan; or
7 (b) Payment of a fee;
- 8 f. Offer a gift or bonus, premium, reward, or other compensation to an individual
9 for executing a contract;
- 10 g. Offer, pay, or give a gift or bonus, premium, reward, or other compensation to
11 a person for referring a prospective customer, if the person making the
12 referral has a financial interest in the outcome of debt management services
13 provided to the customer, unless neither the provider nor the person making
14 the referral communicates to the prospective customer the identity of the
15 source of the referral;
- 16 h. Receive a bonus, commission, or other benefit for referring an individual to a
17 person;
- 18 i. Structure a plan in a manner that would result in a negative amortization of
19 any of an individual's debts, unless a creditor that is owed a negatively
20 amortizing debt agrees to refund or waive the finance charge upon payment
21 of the principal amount of the debt;
- 22 j. Compensate the provider's employees on the basis of a formula that
23 incorporates the number of individuals the employee induces to enter
24 contracts;
- 25 k. Settle a debt or lead an individual to believe that a payment to a creditor is in
26 settlement of a debt to the creditor unless, at the time of settlement, the
27 individual receives a certification by the creditor that the payment is in full
28 settlement of the debt;
- 29 l. Make a representation that:
30 (1) The provider will furnish money to pay bills or prevent attachments;

- 1 (2) Payment of a certain amount will permit satisfaction of a certain amount
2 or range of indebtedness; or
- 3 (3) Participation in a plan will or may prevent litigation, garnishment,
4 attachment, repossession, foreclosure, eviction, or loss of employment;
- 5 m. Misrepresent that the provider is authorized or competent to furnish legal
6 advice or perform legal services;
- 7 n. Represent that it is a not-for-profit entity unless the provider is organized and
8 properly operating as a not-for-profit under the law of the state in which it was
9 formed or that it is a tax-exempt entity unless the provider has received
10 certification of tax-exempt status from the internal revenue service;
- 11 o. Take a confession of judgment or power of attorney to confess judgment
12 against an individual; or
- 13 p. Employ an unfair, unconscionable, or deceptive act or practice, including the
14 knowing omission of any material information.
- 15 2. If a provider furnishes debt management services to an individual, the provider
16 may not, directly or indirectly:
- 17 a. Purchase a debt or obligation of the individual;
- 18 b. Receive from or on behalf of the individual:
- 19 (1) A promissory note or other negotiable instrument other than a check or
20 a demand draft; or
- 21 (2) A postdated check or demand draft;
- 22 c. Lend money or provide credit to the individual, except as a deferral of a
23 settlement fee at no additional expense to the individual;
- 24 d. Obtain a mortgage or other security interest from any person in connection
25 with the services provided to the individual;
- 26 e. Except as permitted by federal law, disclose the identity or identifying
27 information of the individual or the identity of the individual's creditors, except
28 to:
- 29 (1) The commissioner, upon proper demand;
- 30 (2) A creditor of the individual, to the extent necessary to secure the
31 cooperation of the creditor in a plan; or

- 1 (3) The extent necessary to administer the plan;
- 2 f. Except as otherwise provided in section 13-11-21, provide the individual less
- 3 than the full benefit of a compromise of a debt arranged by the provider;
- 4 g. Charge the individual for or provide credit or other insurance, coupons for
- 5 goods or services, membership in a club, access to computers or the internet,
- 6 or any other matter not directly related to debt management services or
- 7 educational services concerning personal finance; or
- 8 h. Furnish legal advice or perform legal services, unless the person furnishing
- 9 that advice to or performing those services for the individual is licensed to
- 10 practice law.
- 11 3. This chapter does not authorize any person to engage in the practice of law.
- 12 4. A provider may not receive a gift or bonus, premium, reward, or other
- 13 compensation, directly or indirectly, for advising, arranging, or assisting an
- 14 individual in connection with obtaining, an extension of credit or other service from
- 15 a lender or service provider, except for educational or counseling services required
- 16 in connection with a government-sponsored program.
- 17 5. Unless a person supplies goods, services, or facilities generally and supplies them
- 18 to the provider at a cost no greater than the cost the person generally charges to
- 19 others, a provider may not purchase goods, services, or facilities from the person if
- 20 an employee or a person that the provider should reasonably know is an affiliate of
- 21 the provider:
- 22 a. Owns more than ten percent of the person; or
- 23 b. Is an employee or affiliate of the person.

24 **13-11-24. Notice of litigation.** Within thirty days after a provider has been served with

25 notice of a civil action for violation of this chapter by or on behalf of an individual who resides in

26 this state at either the time of a contract or the time the notice is served, the provider shall notify

27 the commissioner in a record that it has been sued.

28 **13-11-25. Liability for the conduct of other persons.** If a provider delegates any of

29 its duties or obligations under a contract or this chapter to another person, including an

30 independent contractor, the provider is liable for conduct of the person which, if done by the

31 provider, would violate the contract or this chapter.

- 1 **13-11-26. Powers of the commissioner.** Insofar as consistent with other provisions
2 of law, the commissioner may:
- 3 1. Determine the qualifications of all applicants based on financial responsibility,
4 financial condition, business experience, character, and general fitness which
5 must reasonably warrant the belief that the applicant's business will be
6 conducted lawfully and fairly. In determining whether this qualification is met,
7 and for the purpose of investigating compliance with this chapter, the
8 commissioner may review and consider the relevant business records and
9 capital adequacy of the applicant and the competence, experience, integrity,
10 and financial ability of a person who is a member, partner, director, officer, or
11 twenty-five percent or more shareholder of the applicant.
- 12 2. Conduct investigations and make an examination of any person, whether
13 licensed or not, who is engaged in the debt settlement services business,
14 including all records of such business, and to subpoena witnesses anytime
15 the commissioner has reason to believe such is necessary. The licensee
16 shall pay an examination or visitation fee and must be charged by the
17 commissioner at an hourly rate to be set by the commissioner, sufficient to
18 cover all reasonable expenses of the department associated with the
19 examination or visitation provided for by this section. Fees must be deposited
20 in the financial institutions regulatory fund.
- 21 3. Issue and serve upon any person or licensed debt settlement provider an order to
22 cease and desist to take corrective action when the commissioner has reason to
23 believe the person or agency is violating, has violated, or is about to violate the
24 provisions of this chapter. An interested party may appeal issuance of a cease and
25 desist order under chapter 28-32 by filing written notice of appeal within twenty
26 days after service of the order.
- 27 4. Deny, suspend, revoke, condition, or decline to renew a license for a violation of
28 this chapter, rules or regulations issued under this chapter, or an order or directive
29 entered under this chapter.

1 5. Deny, suspend, revoke, condition, or decline to renew a license if an applicant or
2 licensee withholds information or makes a material misstatement in an application
3 for a license or renewal of a license.

4 **13-11-27. Enforcement authorities, violations, and penalties.**

5 1. Any person that violates this chapter or any rule or order of the commissioner
6 under this chapter or which engages in any act, practice, or transaction declared by
7 any provision of this chapter to be unlawful is guilty of a class C felony.

8 2. The commissioner may impose a civil money penalty not to exceed five thousand
9 dollars per violation upon a person or agency that willfully violates a law, rule,
10 written agreement, or order under this chapter. An interested party may appeal the
11 assessment of a civil money penalty under chapter 28-32 by filing a written notice
12 of appeal within twenty days after service of the assessment of civil money
13 penalties. A civil money penalty collected under this section must be paid to the
14 state treasurer and deposited in the financial institutions regulatory fund.

15 3. The attorney general also may enforce this chapter. The attorney general, in
16 enforcing this chapter, has all the powers provided in this chapter or chapter 51-15
17 and may seek all remedies in this chapter or chapter 51-15. A violation of this
18 chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions,
19 and penalties of this chapter are not exclusive and are in addition to all other
20 causes of action, remedies, and penalties under chapter 51-15, or otherwise
21 provided by law.

22 **13-11-28. Voidable contracts.**

23 1. If a provider imposes a fee or other charge or receives money or other payments
24 not authorized by sections 13-11-21 and 13-11-22, the individual may void the
25 contract and recover as provided in section 13-11-20.

26 2. If a provider is not licensed as required by this chapter when an individual assents
27 to a contract, the contract is voidable by the individual.

28 3. If an individual voids a contract under subsection 2, the provider does not have a
29 claim against the individual for breach of contract or for restitution.

30 **13-11-29. Private enforcement.** Any person that is aggrieved by a violation of this
31 chapter may bring an action to enjoin the violation, or for restitution, or both. The court may

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- 1 award the plaintiff the plaintiff's actual restitution or a sum up to two thousand dollars,
- 2 whichever is greater. The court may award the plaintiff costs, expenses, and reasonable
- 3 attorney's fees. This section does not limit any other claims the person may have against the
- 4 debt settlement provider or any third party subject to this chapter.