

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 315

An Act to amend and reenact §§ 6.1-363.2, 6.1-363.4, and 6.1-363.7 of the Code of Virginia, relating to credit counseling; qualifications.

[H 2460]

Approved March 20, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.1-363.2, 6.1-363.4, and 6.1-363.7 of the Code of Virginia are amended and reenacted as follows:

CHAPTER 10.2.

NONPROFIT CREDIT COUNSELING ACT.

§ 6.1-363.2. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

"Bureau" means the Bureau of Financial Institutions.

"Commissioner" means the Commissioner of Financial Institutions.

"Consumer" means an individual who owes money to one or more creditors, for personal, family, or household purposes, including an individual who owes money jointly with one or more other individuals.

"Credit Counseling Agency" or "Agency" means any person that provides or offers to provide to consumers credit counseling services, including debt management plans.

"Credit counselor" means an employee or agent of an Agency who designs a debt management plan, provides consumer budget and basic financial planning services, or engages in debt settlement or debt pooling on a consumer's behalf.

"Debt collector" means a person defined as a debt collector under 15 U.S.C. § 1692a of the Fair Debt Collection Practices Act.

"Debt management plan" or "DMP" means a program whereby an Agency agrees to engage in debt settlement or debt pooling and distribution services on behalf of a consumer (or multiple consumers if a joint account) with the consumer's creditors, and under which the consumer gives money or control of his funds to such Agency for distribution to the consumer's creditors.

"Debt settlement" means any action or negotiation initiated or taken by or on behalf of any consumer with any creditor of the consumer for the purpose of obtaining debt forgiveness of a portion of the credit extended by the creditor to the consumer or reduction of payments, charges, or fees payable by the consumer.

"Duplicate original" means an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature, or in the case of an electronic transaction, an electronic version with electronic signatures.

"Electronic signature" means a signature as defined in § 59.1-480.

"Licensee" means a person licensed under this chapter.

"Maintenance fee" means a fee paid by a consumer to an Agency for continuing provision of DMP services.

~~"Nonprofit organization" means a person exempt from taxation under 26 U.S.C. § 501 (c) (3) of the Internal Revenue Code.~~

"Person" means any individual, firm, corporation, limited liability company, partnership, association, trust, or legal or commercial entity, or group of individuals however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a person.

"Set-up fee" means a fee paid by a consumer to an Agency for the establishment of the DMP.

§ 6.1-363.4. Application for license; form; content; fee.

A. An application for a license under this chapter shall be made in writing, under oath, and on a form provided by the Commissioner.

B. The application shall include:

1. The name and address of the applicant; and (i) if the applicant is a partnership, firm, or association, the name and address of each partner or member; (ii) if the applicant is a corporation or limited liability company, the name and address of each director, member, registered agent, and principal; or (iii) if the applicant is a business trust, the name and address of each trustee and beneficiary;

2. The name and address of each manager and officer;

3. The addresses of the locations of the business to be licensed;

4. Financial statements for the applicant as of the most recent fiscal year;

5. Evidence that the applicant is a nonprofit organization;

~~6.~~ A current copy of the Agency's standard DMP agreement;

~~7~~ 6. Such other information concerning the financial responsibility, background, experience, and activities of the applicant and the persons referred to in this section as the Commissioner may require;

~~8~~ 7. Any other pertinent information as the Commissioner may require; and

~~9~~ 8. Payment of an application fee of \$500.

C. The application fee shall not be refundable in any event. The fee shall not be abated by surrender, suspension, or revocation of the license.

§ 6.1-363.7. Qualifications.

A. Upon the filing and investigation of an application for a license, and compliance by the applicant with the provisions of §§ 6.1-363.4 and 6.1-363.5, the Commission shall issue and deliver to the applicant the license to engage in business under this chapter at the locations specified in the application if it finds:

1. ~~The applicant is a nonprofit organization;~~

~~2.~~ That the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, trustees, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law;

~~3~~ 2. That the applicant has made acceptable provision for the avoidance of conflicts of interest;

~~4~~ 3. The applicant maintains a separate trust account with an FDIC-insured depository institution for the handling of customers' funds;

~~5~~ 4. The applicant's credit counselors are certified through a bona fide third-party certification provider unaffiliated with the applicant that authenticates the competence of counselors providing consumer assistance;

~~6~~ 5. No more than one-third of the board of directors or managing members are employees, officers, members, principals, trustees, directors, agents, or other representatives of organizations that grant credit to consumers;

~~7~~ 6. The applicant is accredited by the International Standards Organization or the Council on Accreditation or any other organization approved by the Commission; ~~and~~

~~8~~ 7. The applicant has fidelity bond coverage in such principal amount as may be determined by the Commission;

~~8.~~ *The applicant (i) is not the subject of any current material administrative or regulatory proceedings by any governmental authority, and (ii) has not received a material adverse determination in any past administrative or regulatory proceedings by any governmental authority; and*

~~9.~~ *The applicant has filed with the Commission a form, that shall be provided to each consumer prior to his execution of a DMP, that contains the following disclosures to the consumer: (i) all fees charged by the applicant or contributions solicited by the applicant from the consumer; (ii) whether the applicant is a for-profit entity or nonprofit entity; and (iii) whether the applicant received financial support from creditors during the preceding calendar year.*

B. If the Commission fails to make such findings, no license shall be issued and the Commissioner shall notify the applicant of the denial and the reasons for such denial.

C. A license shall not be issued to a collection agency, or to any creditor or association of creditors, or to any credit-granting organization or association of such organizations. For purposes of this chapter the term "creditor" or "credit-granting organization" does not include doctors, lawyers, or other professionals who receive payment for their services in installments, nor does the term include persons whose only participation in a credit transaction is to honor a credit card.