

Uniform Debt Management Services Act Statement

Millions of Americans are in serious financial trouble at the start of the 21st Century. For example, consumer debt exceeds \$2.5 trillion, and the average American household carries more than \$8,500 credit-card debt. As a result, many people have turned to debt-counseling, debt-management, and debt-settlement firms to help them deal with their unsecured debts. These services have been available to people since the nineteen fifties. Some help debtors set up plans to pay off debts over time. Others help debtors negotiate agreements with creditors to settle for paying just a portion of the debt they owe. Most collect a percentage of the payments their debtor clients make to client creditors.

The history of debt counseling and management services is checkered. There have been numerous abuses and efforts to counter abuses statutorily in many states. These services have been criticized for their efforts to steer debtors away from bankruptcy when it may have been more advantageous and less costly to debtors to file. Many states prohibit for-profit debt management services while permitting nonprofit debt counseling services. One of the continuing controversies is whether for profit services should be allowed even if regulated.

Federal bankruptcy reform effective in 2005 changed the game for consumer debt counseling services. Now, in order to file for Chapter 7 bankruptcy, a person must, in most cases, show they have at least attempted counseling about their debts. And, because the new federal bankruptcy rules apply to every state, state laws governing debt counseling and debt management services should be consistent to ensure those comply with federal laws and protect consumers.

In 2005, the Uniform Law Commissioners promulgated the Uniform Debt-Management Services Act (UDMSA). It provides the states with a comprehensive Act governing these services that will mean national administration of debt counseling and management in a fair and effective way. UDMSA may be divided into three basic parts: registration of services, service-debtor agreements, and enforcement.

No service may enter into an agreement with any debtor in a state without registering as a consumer debt-management service in that state. Registration requires submission of detailed information concerning the service, including its financial condition, the identity of principals, locations at which service will be offered, form for agreements with debtors and business history in other jurisdictions. To register, a service must have an effective insurance policy against fraud, dishonesty, theft and the like in an amount no less than \$250,000.00. It must also provide a security bond of a minimum of \$50,000.00 which has the state administrator as a beneficiary. If a registration substantially duplicates one in another state, the service may offer proof of registration in that other state to satisfy the registration requirements in a state. A satisfactory application will result in a certificate to do business from the administrator. A yearly renewal is required.

In order to enter into agreements with debtors, there is a disclosure requirement respecting fees and services to be offered, and the risks and benefits of entering into such a contract. The service must offer counseling services from a certified counselor and a plan must be created in consultation by the counselor for debt-management service to commence. The contents of the agreements and fees that may be charged are set by the statute. There is a penalty-free three-day right of rescission on the part of the debtor. The debtor may cancel the agreement also after 30 days, but may be subject to fees if that occurs. The service may terminate the agreement if required payments are delinquent for at least 60 days.

Any payments for creditors received from a debtor must be kept in a trust account that may not be used to hold any other funds of the service. There are strict accounting requirements and periodic reporting requirements respecting funds held.

With respect to debt settlement services, the UDMSA provides for an overall fee cap based on the amount saved by the consumer (30% of the difference between the principal amount owed upon initiation of the service and the amount the debt is ultimately settled for).

The Act prohibits specific acts on the part of a service including: misappropriation of funds in trust; settlement for more than 50% of a debt with a creditor without a debtor's consent; gifts or premiums to enter into an agreement; and representation that settlement has occurred without certification from a creditor. Enforcement of the Uniform Act occurs at two levels, the administrator and the individual level. The administrator has investigative powers, power to order an individual to cease and desist; power to assess a civil penalty up to \$10,000.00, and the power to bring a civil action. An individual may bring a civil action for compensatory damages, including triple damages if a service obtains payments not authorized in the Uniform Act, and may seek punitive damages and attorney's fees. A service has a good faith mistake defense against liability. The statute of limitations pertaining to an action by the administrator is four years, and two years for a private right of action.

Banks as regulated entities under other law are not subject to the Uniform Act, as are other kinds of activities that are incidental to other functions performed. For example, a title insurer that provides bill-paying service that is incidental to title insurance is not subject to it.

Seven states had adopted the UDMSA as of June, 2010: Colorado, Delaware, Nevada, Rhode Island, Tennessee, Utah, and the U.S Virgin Islands. Interested readers can download the approved text of the Uniform Debt-Management Services Act at <http://www.nccusl.org>.

The 2004 *SSL* volume contains a draft about Debt Management Services based on Maryland Chapter 374 of 2003. Michael Kerr, ULC *Legislative Director/Legal Counsel*, says "The Maryland Act covers the same general substantive area as the UDMSA, but it is not the same. The UDMSA is significantly more comprehensive. The Maryland law has been significantly amended since its adoption in 2003. The Maryland bill (as chaptered) limits licensure to nonprofits, bans 'debt adjusting', and doesn't provide meaningful oversight of debt settlement services (which largely arose after 2003)."

Submitted as:

Tennessee

[Chapter 469 of 2009](#)

Status: Enacted into law in 2009.