

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on 12/15/2011 by the
Date prior to or same as filing date
Dept. of Consumer & Business Services, Div. of Finance & Corporate Securities OAR 441
Agency and Division Administrative Rules Chapter Number

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to become effective January 1, 2012. Rulemaking Notice was published in the November 2011 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Repeals additional counseling fee for debt management service providers in accordance with statutory sunset.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: 441-910-0000

REPEAL: 441-910-0092

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 697.840

Other Auth.:

Stats. Implemented: 2009 Or Laws ch 604, §§ 9a & 30

RULE SUMMARY

During the 2009 regular session, the Legislature passed House Bill 2191 to govern the activities of debt management service providers. As part of the updated law, the Legislature placed statutory limits on the amount of fees that a registered debt management service provider could charge, including for counseling clients. During deliberations on the fee limits, the Legislature authorized a temporary, additional counseling fee that a registered debt management service provider may charge. In implementing the bill, the Department of Consumer and Business Services (DCBS) adopted rules clarifying under what circumstances a registered debt management service provider could charge the additional counseling fee. On January 1, 2012, the authority in statute for the additional counseling fee sunsets and will no longer be in force. Because the underlying authority for the rules will no longer be in force, DCBS is repealing these implementing rules. The repeal itself will be effective as of January 1, 2012.

/s/ David Tatman

David C. Tatman

December 15, 2011

Authorized Signer

Printed name

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

441-910-0000

Definitions

The definitions of terms used in ORS 697.602 and the rules of OAR chapter 441, division 910 are:

(1) “Act as a broker” or “brokering” includes any of the following activities undertaken for the payment of money or other valuable consideration:

(a) Soliciting or receiving an application from a consumer for a debt management service;

(b) Providing a consumer’s name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service;

(c) Referring a consumer to another debt management service provider, if the person is a debt management service provider; or

(d) Forwarding or providing a completed application for a debt management service to a debt management service provider.

(2) “Advantageous to the consumer” means a plan for a debt management service that places a consumer in a more favorable or beneficial position in relation to the consumer’s debt than if the consumer did not agree to debt management services, taking into consideration the suitability of the proposed services and the customer’s ability to pay for services. A plan under this section includes, but is not limited to, the following:

(a) A plan that improves or preserves a consumer’s credit record, history or rating;

(b) A plan that enables a consumer to obtain or use credit in the future; or

(c) A plan that obtains favorable or beneficial changes to the principal, interest, loan term, or other key terms of an existing debt obligation.

(3) “An activity for which a person receives money or other valuable consideration or expects to receive money or other valuable consideration” under ORS 697.602 does not include a negotiation, an offer, an attempt or an agreement to negotiate the sale, exchange, purchase, rental or leasing of real estate by a licensed real estate broker if:

(a) The sale price of the real estate is for an amount that is less than the amount of the seller's outstanding obligation on the home loan, commonly known as a short sale; and

(b) The real estate broker receives compensation that is usual and customary for a real estate broker and under the terms of an executed real estate contract with the debtor as a real estate seller.

(4) “Director” means the Director of the Department of Consumer and Business Services.

(5) “Trust account” means an account held at an insured institution taking deposits at its headquarters in Oregon or a branch in Oregon into which all funds received or handled on behalf of Oregon consumers by the debt management service provider are initially deposited.