

**NOTICE OF FINAL RULEMAKING**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE**

**CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**

**– FINANCIAL INSTITUTIONS**

**ARTICLE 6. DEBT MANAGEMENT COMPANIES**

**R20-4-602. Applications**

- A.** An applicant for a debt management company license shall send the Department an application on the form required by the Director. If the Director determines that a credit report is required as authorized under A.R.S. § 6-704(A), the applicant shall order a credit report from a credit reporting agency disclosing the credit history of the applicant’s principals or managing agents and submit the credit report to the Department. A complete application shall include the credit report required by this Section and all of the following:
1. The surety bond required by A.R.S. § 6-704(B);
  2. Fidelity bonds if required by the Director under A.R.S. § 6-704(D);
  3. The nonrefundable application fee specified in A.R.S. § 6-126(A)(14);
  4. An original license fee described in A.R.S. §§ 6-126(B), 6-126(D)(2), and 6-706;
  5. A sample of the contract intended to be used by the applicant required by A.R.S. § 6-704(E);
  6. Current financial statements as described in Section R20-4-604(A)(5);
  7. A copy of the current articles of incorporation, by-laws, partnership agreement or other organizing documents used to form the applicant business entity;
  8. The name and address information required under A.R.S. § 6-704(A); and
  9. A background check, on the form required by the Department, for each of the applicant’s principals, principal officers, trustees, partners, and managing agents.
- B.** A debt management company applying to operate a branch office or use an agency shall send the Department an application on the form required by the Director.
- C.** A debt management company applying to renew a license shall deliver, on or before June 15 of each year, an application to the Department on the form required by the Director. A debt management company shall apply separately to renew each authorized business location. With each application for renewal, a debt management company shall include the renewal fee described in A.R.S. § 6-706 and specified in A.R.S. § 6-126(D)(2).
- D.** The Department may require additional information the Director considers necessary in connection with an application under this Section.

**R20-4-603. Reports**

- A.** Each debt management company and each nonprofit corporation or association exempt from licensure under A.R.S. § 6-702(4) and (5), shall send the Department an annual report of its business and operations for each place of business during the previous year beginning July 1 and ending June 30, using the form required by the Director. A debt management company shall deliver its report to the Department on or before August 15.
- B.** Each debt management company shall notify the Department of any change in its ownership or in the names of its officers, directors, trustees, partners, or managing agents within 30 days of the change.

**R20-4-604. Records**

- A.** A debt management company shall keep books, accounts, and records adequate to provide a clear and readily understandable record of all its business activity. A debt management company may keep its books, accounts, and records as electronic records if the debt management company can generate all information and documentation required by this Section in the timeframe set by the Department for examination or other purposes. A debt management company's books, accounts, and records shall include:
1. A file for each account containing:
    - a. A copy of all correspondence concerning the account;
    - b. Evidence of the notice given to creditors of the debt management contract;
    - c. A subsidiary ledger disclosing all financial transactions concerning the account;
    - d. A copy of each written statement of account given to the debtor;
    - e. The original budget analysis required under Section R20-4-607; and
    - f. The original contract between the debt management company and the debtor, including all amendments.
  2. A trust account general ledger, which is kept current daily, which reflects each deposit to and disbursement from the trust account.
  3. Each reconciliation of the debt management company's trust account, prepared at least once a month.
  4. A general ledger, kept current monthly, which reflects each financial transaction by the debt management company except those recorded in its trust account general ledger.
  5. A financial statement produced in accordance with generally accepted accounting principles at least once every three months, or more frequently if directed by the Director, which reflects the financial condition of the debt management company. The financial statement shall include:
    - a. A balance sheet,
    - b. A statement of income and retained earnings,
    - c. A statement of changes in financial condition, and
    - d. Appropriate footnotes that either:
      - i. Explain entries in the documents listed in subsections (A)(5)(a), (b), and (c);
      - ii. Contain material information not required or not reportable in documents listed in subsections (A)(5)(a), (b), or (c); or
      - iii. Contain other disclosures required by generally accepted accounting principles.
  6. A record of all litigation naming the debt management company as a party including:
    - a. For pending litigation:
      - i. A copy of the complaint;
      - ii. A copy of any answer filed by the debt management company in response to the complaint; and
      - iii. A copy of any motion filed by the debt management company; and
    - b. For any litigation that is no longer pending, a copy of any judgment showing the settlement date, dismissal, or other final order disposing of the litigation.
- B.** All records required under this Section may be maintained at the debt management company's office in Arizona. A debt management company may keep its records outside this state if it:
1. Makes the records available to the Director, for examination or other purposes, in this state not more than three business days after demand; and

2. Allows its debtor customers to call toll free to obtain information from the records that are not available from the debt management company's office in Arizona.
- C. Each debt management company shall preserve its books, accounts, and records for the period required by A.R.S. §§ 6-709(J) and 6-710(1).

**R20-4-607. Budget Analysis**

- A. A debt management company shall not accept an account unless it first concludes that the debtor can reasonably meet the payments agreed upon by the debt management company and the debtor. The debt management company's conclusion shall be supported by a written budget analysis kept in the company's records.
- B. The written budget analysis shall either be part of an application form or a separate document. The debtor shall date and sign the written budget analysis before the debt management company draws any conclusions from the budget analysis.
- C. The budget analysis shall disclose the disposable income available for payment to the debt management company after the debtor pays their reasonable and necessary living expenses including taxes, insurance, child support, alimony, and residential rent or mortgage payments.

**R20-4-611. Advertising**

- A. A debt management company shall not use advertising, communication, or sales material that contains:
  1. A false, misleading, or deceptive statement about the debt management company's services or charges. A statement is a violation of this Section if the person making the statement does not state a material fact necessary to make the statement true, in light of the circumstances under which it is made;
  2. A claim, direct or implied, that the debt management company consolidates debts or makes loans; or
  3. A schedule of payments in any form.
- B. A debt management company's advertising, communication, and sales material shall contain the following legend, conspicuously displayed in at least 12 point type and in bold print:  
"NOT A LOAN COMPANY."

**R20-4-612. Solvency and Minimum Liquid Assets**

- A. A debt management company shall not operate if it is insolvent. For purposes of this Section "insolvent" has the same meaning as in A.R.S. § 47-1201(23).
- B. To determine compliance with A.R.S. § 6-709(A), a debt management company's liquid assets include funds held in its trust account. Liquid assets do not include goodwill and other intangible assets. A debt management company's total liquid assets shall exceed by \$2,500.00 the total of all its current business liabilities together with all balances held for debtors as reflected in the company's subsidiary ledgers.
- C. Except as otherwise provided by this Section, or in a specific ruling by the Director, a debt management company shall use generally accepted accounting principles to compute assets and liabilities.