



State of Utah

DEPARTMENT OF COMMERCE
DIVISION OF CONSUMER
PROTECTION

DEBT-MANAGEMENT SERVICES PERMIT APPLICATION INSTRUCTIONS

General Instructions: Please respond to each item as requested. Responses such as “see contract” or “see materials” are not acceptable.

Required Applicant Information

Item 1: Please state the legal name of the organization (the applicant) applying to provide debt management services in the State of Utah. This name usually takes the form of a legal entity such as a corporation (inc.), limited liability company (LLC), personal corporation (PC), or a partnership or limited partnership (LP).

Item 2: Please provide any additional names, if applicable, that the applicant will use or may be known by for the purposes of advertising, soliciting, or providing debt-management services.

These may include shortened forms, abbreviations, or variations of the legal name of the applicant. It may be an unrelated name the applicant opts to use for increased name recognition.

Item 3: Please provide the street address of the applicant.

Item 4: Please provide the phone number of the applicant. Please also state the facsimile (fax) number of the applicant, if applicable.

Item 5: Please provide the primary electronic mail (email) address of the applicant. This email address should be the general customer service email that is given to prospective clients who may want to seek answers to specific questions via email.

Item 6: Please provide the website or World Wide Web address that will serve as the applicant’s homepage. This should be the main page of the applicant’s website that prospective clients are initially directed to by the general advertising.

Also, either write the URL in the space provided or attach a screen printout of the webpage where the name of the applicant and all other names under which the applicant does business are listed. If the entire webpage is printed, please highlight the requested information. If the applicant chooses to maintain a website, Utah Code Ann. § 13-42-118(7)(a) requires that the name, and all other names the applicant uses to conduct business be located either directly on the homepage or on a page that is connected to the homepage by a link that is clear and conspicuous.

Also, either write the URL in the space provided or attach a screen printout of the webpage where the principle business address, phone number, and email address are listed. If the entire webpage is printed, please highlight the requested information. If the applicant chooses to maintain a website, Utah Code Ann. § 13-42-118(7)(b) requires that the principle business address, telephone number, and email address be located either directly on the homepage or on a page that is connected to the homepage by a link that is clear and conspicuous.

Finally, please either write the URL in the space provided or attach a screen printout of the webpage where the names of the principal officers of the applicant are listed. The people that would need to be listed would be the CEO, CFO, CIO, COO or other chief level officers and directors of the applicant. Persons who own at least 10% of the applicant do not need to be listed unless they hold a position listed above that would require them to be listed on the webpage. If the entire webpage is printed, please highlight the requested information. If the applicant chooses to maintain a website, Utah Code Ann. § 13-42-118(7)(c) requires that the names of the principal officers of the applicant be listed on the website, either directly on the homepage or on a page that is connected to the homepage by a link that is clear and conspicuous.

Item 7: Please provide the toll-free phone number the applicant will use for calls placed by clients to its customer service representatives.

Item 8: Please provide the name, mailing address, phone number, facsimile number, if applicable, and e-mail address of the person within the organization the Division of Consumer Protection should contact to handle matters relating to this application and any questions or complaints that may be directed toward the Division of Consumer Protection. This may be the same person who prepares this application.

Item 9: Indicate by checking the appropriate box whether the applicant is claiming tax-exempt status or is organized under IRS code §501(c)(3) or whether the applicant is organized as a for-profit entity.

Item 10: Please indicate whether the applicant will maintain a physical location in the State of Utah. This would include a PO Box or lock box where payments or correspondence are received but would not include the physical presence of the organization's registered agent or other independent service providers. If applicable, please provide the requested information relating to each physical address located in the State of Utah.

Item 11: Please provide the name, address, phone number, and if applicable, the facsimile number of the registered agent of the applicant. Utah Code Ann. § 13-42-105(2)(e)(i) requires a licensed debt-management services provider to have a registered agent located within the state of Utah.

Item 12: Please provide the street address, city, state, and zip code, along with the phone number of each person who is a director, officer, or chief level employee such as CEO or CFO and any individual who has a 10% or greater ownership interest in the applicant. The persons listed in this section may be owners, owner-operators of the organization, or they may be chief level employees who have no ownership stake in the organization whatsoever.

Item 13: Please list the name and dollar amount of compensation paid to the five most highly compensated employees within the organization during each of the last 3 years. These may be employees at any level of the organization who serve in any job function and may include employees whose compensation is based solely on commission. Both the name and dollar amount paid should be present. Optionally, the position of the employee within the organization may be included with the above required information. There should be at least 5 persons who received compensation listed for each of the previous 3 years unless the organization has been in operation for less than 3 years, in which case each year the organization has been in operation should be covered, or the organization has employed fewer than 5 people, in which case every employee should be listed.

Item 14: For each Director, please provide the address, city and state of each employer, past or present, going back at least 10 years. Optionally, the resumes of each director may be attached to the application, as long as they include an adequate employment history to cover the previous 10 years and the addresses of the employers are listed.

Item 15: Indicate every jurisdiction or state, during the immediately previous 5 years, where:

- A.** The applicant or any of the applicant's officers or directors are currently or have been registered and/or licensed to provide debt-management education or services.
- B.** Please list all the states, or countries if outside the United States, where any individual who has received debt-management education or services from the applicant has resided while receiving said services.

Item 16: Please provide the name of any owner, director or person employed by the applicant who has at least a 10% ownership stake in either of the following types of organizations:

- A.** An affiliate organization of the applicant. An affiliate of the applicant would be a parent company, a subsidiary, or another subsidiary of the same parent company, or any organization that has received more than \$25,000.00, either during this current year or the previous year, from the applicant. Provide the name of the affiliate.
- B.** Please provide the name and title of the officer, director, or owner and the name of the entity in which they own at least 10% that provides products or services related to the applicant's debt management services. The purpose of this item is to determine if there is common ownership of a business that provides something critical to the applicant's debt-management services. It would be significant and reportable if a director of the applicant were also a 10% owner of a company that performs credit checks which the applicant used for its clients or the creator of a debt management or credit repair plan that was offered to clients of the applicant. It would not be a significant or reportable relationship if a director is a shareholder of a company that provides office supplies, signs or other incidental materials as long as the dollar amount purchased in a year does not exceed \$25,000.00.

Item 17: For purposes of this item, an affiliate is defined as an employee of the applicant, a spouse, sibling, sibling of a spouse, a linear ancestor, a linear descendent, the spouse of a linear ancestor or linear descendent, an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by whole blood, half blood or adoption, or the spouse of any listed relative, or any person who occupies the residence of an employee.

Item 18: Divide the number of persons listed in Item 17 by the total number of directors of the organization. If this number is greater than .25 (25%) check "yes." If the number is .25 or less, check "no."

Item 19: The account(s) listed in this item should not retain any money belonging to the applicant and no debts belonging to the applicant should be paid from the monies retained in the listed account(s). The Division of Consumer Protection must be granted access to these accounts at a level that allows the Division to view account balances and transactions and obtain bank statements. The balances and transactions within these accounts will be audited periodically by the Division of Consumer Protection.

A. This should be a listing of the trust accounts maintained by the applicant where money is kept that is received from clients and is intended for the sole purpose of distribution to creditors on behalf of the clients. The bank name, bank address, bank routing number, and account number should be clearly printed in the space provided. All the requested information can be found on a check associated with each bank account. If the space is not sufficient please attach pages as necessary.

B. The name and title of each person who has access to the trust accounts should be listed in the space provided. Access can be either as a signer on one or more of the trust accounts or an individual who will be responsible for performing the required monthly reconciliations. If the space is not sufficient please attach pages as necessary.

Item 20: Please indicate if the applicant's debt-management counselors are paid hourly, by commission or a combination of both and if any formula is used to calculate commissions or bonuses the employees may earn.

Item 21: Please indicate if the applicant itself or any officers, directors, employees or agents of the applicant who are authorized to have access to the required trust accounts have been the subject of any material civil or criminal judgment or litigation or any material administrative enforcement action by a governmental agency in any jurisdiction. Material civil or criminal actions would include charges of theft, fraud, embezzlement, SEC charges or an SEC investigation that is ongoing. Immaterial charges would include traffic violations, divorce or other non-business related civil case. Please include the specifics of the charges, any penalties and the current disposition of the case. Involvement in current or past litigation will not necessarily bar an applicant from approval. The frequency, type, and status of all litigation will be considered when determining acceptance or rejection of an application.

Item 22: Please give a brief description or summary of the three most commonly used debt management educational programs that are or will be provided to individuals. If fewer than 3 programs are available, please indicate this on the application. Please do not respond "see printed materials" or "see website."

Item 23: Please attach a copy of any budgetary analysis, financial analysis, or other type of credit analysis that will be done on behalf of the customer. This is generally a comparison of income items, expense items, and other monetary items. The budgetary analysis should form the basis for debt-management recommendations and the program provided to the client. The budgetary analysis may be either a blank copy of forms given to a client to fill out or a completed analysis with test data. Please do not provide a printout of data from a specific client without first obtaining written permission from the client and removing or blacking out identifying information such as the client's name and address.

Item 24: If this is a renewal application, or if the company has been providing debt-management services to clients within the state of Utah for the past 12 months, please provide the dollar amount of the sum total of all money received from Utah clients within the last 12 months. Also include the sum total of all money that has been disbursed to creditors of clients who are Utah residents from the previous 12 months. It is not expected that the two numbers will be identical. If this is not a renewal application either leave this item blank or, preferably, indicate on the application that it does not apply at this time.

Item 25: Please review your bank statements for the previous 6 months and locate the single highest daily balance listed on any of these statements. Please indicate this amount in the space provided. If this is not a renewal application either leave this item blank or, preferably, indicate on the application that it does not apply at this time. Note: If this amount is greater than \$250,000.00 then the applicant will need to increase the amount of the required insurance policy from \$250,000.00 to at least the amount listed here.

Item 26: Please sign and date your application. The application cannot be accepted until it is signed by an authorized individual within the organization. If any information becomes incorrect or incomplete, you must file the complete information or correct your application within ten (10) days after the information becomes incorrect or incomplete.

- *Your application is not complete without attaching the required documents. See instructions below for a list of documents that need to be included, appropriate preparation of the documents and preparing specific documents.*

Documents To Attach

Document 1: If the applicant will have any clients execute a power of attorney, a blank copy of this agreement should be submitted.

Document 2: Please attach the requested, audited financial statements, audited by a certified public accountant, for the number of required years required based upon the type of application being filed. If the applicant has not yet commenced business operations, please indicate this information on the application and include pro-forma budgets of expected activity.

Document 3: Please provide a copy of the certificate of accreditation or other documentation indicating that the applicant has been accredited through a program listed under Approved Accreditation Programs and Organizations listed in Appendix A of these instructions.

Document 4: Please provide copies of certification records for each employee furnished by one of the approved independent credit counselor certification programs listed in Appendix A of these instructions. These should be copies of the certificates received by each individual and not a spreadsheet or a report run of all individuals who have completed the certification program.

Document 5: Please provide a listing of the itemized fees and charges that will be required of Utah residents as well as any donations or other forms of compensation the applicant will seek to collect from clients residing in the State of Utah.

Document 6: For every officer, employee, or agent of the applicant who will have access to the trust account(s), please submit the results of a background check for each individual listed. Utah Code Ann. § 13-42-106(14) specifically requires the background check, which must have been completed within the previous 12 months. The application cannot be considered complete unless the results of the criminal records check are completed and received by the Division of Consumer Protection. Note: As indicated, the criminal records check attached to the application must have been completed within the previous 12 months. If this is a renewal application, the Criminal Records Affidavit, signed and notarized, must be submitted for every officer, employee, or agent of the applicant who is authorized to have access to the trust account(s) identified in item #19 of the application and has submitted background checks in a previous application.

Document 7: Prior to commencing debt-management services in the State of Utah, the applicant must secure a surety bond of at least \$100,00.00 that is payable to the State of Utah and to the clients of the applicant who reside in the State of Utah. Please attach a copy of the surety bond or the appropriate US Government securities that may be used in lieu of a surety bond.

Document 8: As required by Utah Code Ann. § 13-42-105 (2)(d), any company providing debt management services to residents of the State of Utah must maintain an insurance policy in the greater amount of either \$250,00.00 or the highest single day balance, within the 6 months previous to this application, of the account(s) where client funds are held in trust. If this is an initial application, attach evidence of insurance in the amount of \$250,000; (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant; (ii) issued by an insurance company authorized to do business in the State of Utah and rated at least A by a nationally recognized rating organization; (iii) with a deductible not exceeding \$5,000; (iv) payable to the applicant, the clients who have agreements with the applicant, and the State of Utah, as their interests may appear; and (v) not subject to cancellation by the applicant without the approval of the Division of Consumer Protection. If this is a renewal application, the insurance must meet these same requirements and must be in an amount equal to the larger of \$250,000 or the highest aggregate daily balance in the required trust account(s) during the six-month period immediately preceding the application.

Document 9: If the applicant is claiming tax-exempt status or is organized under IRS code §501(c)(3), the applicant should attach evidence of its tax-exempt status. This will be a letter from the IRS indicating that the applicant has been approved for tax-exempt status. Document 10: Please attach a copy of the articles of incorporation, articles of organization, or the document applicable to the specific type of entity that officially organizes the applicant as a legal entity within the state it is legally organized in. The applicant may be legally organized in a state other than Utah.

Document 11: The educational materials used by the applicant. This may include pamphlets, brochures, compact disks, books and booklets, workbooks, magazines, PowerPoint, slide or other computer presentations, audio or video disks, cassettes, or other presentations. Printed materials should be submitted in either original production or a reasonable reproduction. Digital materials can be submitted in either a reasonable printed reproduction or compact disk/DVD format. Audio or video materials may be submitted either in their original format or in a reasonable transcript.

Document 12: Please provide a copy of each form, brochure, pamphlet, agreement, or other document that will be given to a resident of the State of Utah for purposes of forming an agreement between the client and the applicant with the appropriate highlighting and numbering as directed beginning on page 10 of the application:

Agreements with Utah Consumers

1: The agreement between the applicant and prospective clients should contain adequate space to record the name and address of the individual who will be receiving debt-management education or services from the applicant. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

2: The name, business address, and phone number of the applicant offering debt-management education and services should be printed and clearly visible on the agreement. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

3: Utah Code Ann. § 13-42-116 requires that debt-management service providers maintain a tollfree phone where they may be reached during normal business hours. This toll-free phone number should be made available to clients of the applicant.

4: On the client agreement there should be an itemized list of the services that either the client may select from or that will be included in the packages the client may select from. The price or the method of determining the price for each of these services should be listed.

A. List of all services the client may elect to receive free of additional charge if the client elects to enter into a debt-management plan at this time.

B. List of the services a client may elect to receive for a fee should the client elect not to participate in a debt-management plan at this time. This list may contain the same items as the above list if a fee is allowable for the service.

C. List of all services the client may elect to receive for which there will be an additional fee even if the client elects to participate in a debt-management plan at this time.

It is important that these fees do not exceed the allowed limits set forth in Utah Code Ann. § 13- 42-123(4) and (6). The allowed limits may be adjusted in the future by the Division of Consumer Protection. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

5: From among the items and services the applicant offers, the client agreement should list:

A. the services the client has elected to receive; and

B. a listing of applicable fees and charges for the itemized services or the method of determining the amount of the charge, plainly visible and available for customer review.

It is important that these fees do not exceed the allowed limits set forth in Utah Code Ann. § 13- 42-123(4) and (6). The allowed limits may be adjusted in the future by the Division of Consumer Protection. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

6: The client agreement or financial analysis given to the client with or prior to the client agreement should disclose to the client the following information regarding each payment to be made by the client:

- A.** the amount of each payment to be made or the amount that will be electronically withdrawn from the bank account of the client. This amount should consist of the sum of money that will be paid to the client's creditors and any fees that will be paid to the applicant, such as monthly fees;
- B.** the date on which the payment will be due or on which the funds will be withdrawn. If the plan calls for bimonthly or weekly payments or withdrawals all dates will need to be listed; and
- C.** an estimated date on which the final payment will be due from the client or on which the final payment will be withdrawn from the client's bank account.

Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

7: This should be a listing of all creditors the client is known to have and the list should be grouped according to the following criteria:

- A.** The first listing of creditors should include those the applicant believes will grant concessions to the client. These concessions may include reductions in interest rates or the waiving of late fees and penalties.
- B.** The second group of creditors listed should be those that the applicant will direct payment to on behalf of the client but that will not grant any concessions to the client.
- C.** The third group listed should be those creditors the client has that the applicant believes will not participate in the plan at all and that will not receive payments from the applicant but will still need to be paid directly by the client.
- D.** The final group listed should be any other creditors the client has that do not fit into any of the groups described above.

Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

8: Upon the client agreement, or in a separate record that the client may keep, there should be a section clearly explaining how frequently the client will receive account statements as well as the client's right to request additional statements. Utah Code Ann. § 13-42-127 currently requires a monthly account statement to be sent to each active client as well as a statement to be sent within 5 business days of the request of a statement, as long as no more than 1 additional statement is requested within the month. Additional account statements are required to be provided upon the occurrence of special events, such as the termination of a client agreement. Please see Utah Code Ann. § 13-42-127 for additional information on when account statements may be required of the applicant. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

9: If at any time before or during the course of a debt-management plan a creditor withdraws, the applicant is required to notify the client. At this time the client may elect to modify or terminate the debt-management plan. The applicant is required to notify the client of this legal right. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

10: The client agreement should contain a statement from the applicant to the client acknowledging that the Division of Consumer Protection may audit any of the trust accounts or any of the records associated with the trust accounts that the applicant has established and that the client agrees to permit the disclosure of the information necessary to conduct these audits. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

11: The applicant will have the right, under Utah Code Ann. § 13-42-119(1)(f)(vii), to terminate an agreement with a client at anytime for good cause. This information is required to be disclosed to a prospective client. There are additional reasons that the applicant may terminate the agreement with a client, such as non-payment, that the applicant may wish to disclose to the prospective client at this time, in conjunction with this item. If at any time the applicant elects to terminate a plan with a client, any money that has not been paid to the client's creditors must be returned to the client, except money received for the payment of fees. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

12: As indicated, under Utah Code Ann. § 13-42-119(1)(f)(vii), a client may terminate the agreement with the applicant at any time by email, mail, or delivery of a notice to cancel. A disclosure is required that incorporates the verbiage under Utah Code Ann. § 13-42-119(1)(f)(vii), which states, that the individual may terminate the agreement at any time by giving written or electronic notice, and that, if notice of termination is given, the individual will receive all unexpended money that the provider or its designee has received from or on behalf of the individual for payment of a credit and, except to the extent they have been earned, the provider's fees. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

13: Please provide, somewhere on the client agreement, a clear statement indicating that a client or prospective client living in Utah may contact the Division of Consumer Protection with any questions or concerns about the applicant. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

14: Please list, somewhere on the client agreement, the current contact information for the Utah Division of Consumer Protection, including name, address, phone number, and website. This information is available on the front of the application or on the Division's current website: <http://www.dcp.utah.gov>. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

15: This should explain that a client has the right to terminate the agreement at any time for any reason by giving the provider written or electronic notice. The provider will refund all unexpended money to the client and any powers of attorney will be void. Please highlight this information on the client agreement and note the page number this information appears on in the space provided. Note: A client may waive this right if a situation necessitates, such as the need for an immediate disbursement of funds. The client must waive this right explicitly by delivering a document of their making to the applicant. Use of a form letter provided by the applicant is not valid.

16: Prior to allowing a prospective client to assent to a debt-management service, the applicant is required under Utah Code Ann. § 13-42-117(4) to inform the prospective client of other options, including bankruptcy, and that participation in a debt-management plan may have adverse effects on a client's personal credit rating. The required wording will vary based on the type of debt management program being provided. Required wording types are listed in Utah Code Ann. §13-42-117(5), (6), or (7). The statement should be on a separate page and surrounded by black lines.

The page should also contain the name and business address of the applicant. Only the information required by this item should be on the page that contains this information.