

40 KAR 2:350. Debt adjusters.

RELATES TO: KRS 380.010, 380.030, 380.040, 380.050, 380.060, 380.070, 380.080, 380.090, 380.100, 380.110, 380.120, 380.130, 380.990

STATUTORY AUTHORITY: KRS 380.040(5), 380.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 380.050 requires the Attorney General to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 380, relating to debt adjusting. KRS 380.040(5) requires a person to file a registration form developed by the Attorney General. This administrative regulation establishes the registration and renewal process and incorporates by reference the forms to be utilized by persons subject to registration.

Section 1. Definitions.

- (1) "Debt Adjuster Bond" means the "Commonwealth of Kentucky Debt Adjuster Surety Bond, Form DA-3", incorporated by reference in this administrative regulation.
- (2) "Debt Adjuster Irrevocable Letter of Credit" means the "Commonwealth of Kentucky Debt Adjuster Irrevocable Letter of Credit", Form DA-4, incorporated by reference in this administrative regulation.
- (3) "Division" means the Office of the Attorney General, Consumer Protection Division.
- (4) "Registrant" means a person filing the registration form required by KRS 380.040(5) and this administrative regulation.
- (5) "Registration form" means the "Commonwealth of Kentucky Debt Adjuster Registration Statement".

Section 2. Registration.

- (1) The initial registration, or a renewal of registration, for a person engaging in debt adjusting pursuant to KRS Chapter 380 shall be made on the "Commonwealth of Kentucky Debt Adjuster Registration Statement". Each person engaging in debt adjusting shall register by:
 - (a) Completing the information required by the registration form and submitting:
 1. The legal name of the registrant;
 2. Whether the registration is an initial or renewal registration;
 3. The registrant's contact person, including name, title, telephone number, fax number, and, optionally, e-mail address;
 4. Other names under which the registrant conducts business, and provide copies of all filings in Kentucky regarding the use of an assumed name or names;
 5. The registrant's principal physical business location, which shall not be a post office box, including street address, city, state, and zip code;
 6. The registrant's mailing address if different from the principal physical business location, including address, city, state, and zip code;
 7. The registrant's telephone number;
 8. The registrant's fax number;
 9. The registrant's Web site;
 10. The registrant's agent for service of process in Kentucky, including name, address, city, state, and zip code;
 11. The location where the registrant keeps or maintains records of its customers who reside in Kentucky if different from the principal physical business location, including address, city, state, and zip code;
 12. The registrant's type of business structure, indicating whether it is a corporation, limited liability company, general partnership or joint venture, limited partnership, natural person, or other type of structure and describing such other type, the state under the laws of which the business structure was formed, and including a copy of registrant's certificate of authority to transact business in the Commonwealth of

Kentucky issued by the Kentucky Secretary of State or other evidence of authority to transact business in the Commonwealth of Kentucky and describing this other evidence;

13. A description of the debt adjusting services the registrant will offer, sell or provide to Kentucky residents, and identifying whether the registrant engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property;

14. The registrant's fee schedule, indicating the amount of the fee for initial set-up, the amount of the consultation fee, the amount and frequency of the service fee or other periodic fee, the amount of the bad check charge, and the amount and frequency of any other fee or fees and describing these other fee or fees;

15. The registrant's officers, directors, trustees, general partners, and sole proprietor, as applicable, and any person having management responsibilities in the registrant's business activities, including name, address, telephone number, title or position held, and percentage of ownership interest;

16. The financial institution in which the registrant will maintain a trust account into which Kentucky consumer funds will be deposited and withdrawn to pay respective creditors, including the name, address, city, state, zip code, telephone number, and fax number;

17. A sample of each type of contract or agreement for the registrant's debt adjuster services with Kentucky residents;

18. The aggregate amount of all deposits made with the registrant by all debtors in each of the six (6) months preceding the filing of this registration;

19. The aggregate amount of all deposits made with the registrant by all Kentucky residents in each of the twelve (12) months preceding the filing of this registration;

20. Information regarding each applicable insurance policy, including policy number, the name of the insurer that issued the policy, whether the division is named as an additional interested party, whether the insurance policy covers errors and omissions, employee dishonesty, depositor's forgery, computer fraud, or violations of KRS Chapter 380, the policy amount, the deductible amount, the insurer's rating and the rating organization, and including a complete copy of the insurance policy and declarations or, if a complete copy of the insurance policy and declarations was previously provided to the division, a copy of the current declarations or certificate of coverage applicable to the policy;

21. A completed Debt Adjuster Bond, or, in lieu thereof, a completed Debt Adjuster Irrevocable Letter of Credit;

22. A list of each state in which the registrant is registered or licensed to provide debt adjuster services and the time of filing the registration;

23. The signature and oath of the registrant, using the following oath: "I hereby swear or affirm that I am an authorized representative of the registrant set forth above, and that the statements contained herein and attachments hereto are true and correct", and including the printed name and title of the person signing the oath;

24. A completed notarization of the signature and oath of the registrant, including the seal of the notary public;

(b) Filing the original of the registration form and accompanying documentation with the Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601; and

(c) Paying the fee required by KRS 380.040(5).

(2) Registration shall be valid for one (1) year from the effective date stated in the written confirmation of registration provided by the division, and may be renewed annually by

making the required filing and paying the renewal fee.

(3) Deadline for filing.

- (a) The initial registration form and fee shall be filed with the division prior to the date the registrant will engage in debt adjusting pursuant to KRS Chapter 380.
- (b) The renewal registration form and fee shall be filed with the division at least four (4) weeks prior to the expiration of the registration.
- (c) The registration form shall be considered filed as of the date it is:
 - 1. Delivered to the Division; or
 - 2. Deposited in the mail or with a commercial postal service on or before the due date, as indicated by the postmark applied by the U.S. Postal Service or official mark applied by a commercial postal service. The mark made by a privately-held postage meter shall not be considered in determining the date of filing.

(4)

- (a) If the Division determines that the registration form or the materials submitted with the registration form do not comply with KRS Chapter 380 or contain all information or materials required by KRS Chapter 380 or this administrative regulation, the division shall notify the registrant in writing, specifying the noncompliance or the information or materials that were not completed in or provided with the registration form.
- (b) The registration shall not be effective until a registration form or an amended registration form is filed with the division that contains all information and materials required by KRS Chapter 380 and this administrative regulation.
- (c) The division shall provide a written confirmation of registration.

Section 3. A person shall not engage in debt adjusting prior to the timely filing of a complete and accurate registration which has been confirmed by the division pursuant to Section 2(4)(c) of this administrative regulation.

Section 4. Annual Audit.

- (1) The annual audit required by KRS 380.040(6) shall include an audit of:
 - (a) The registrant's financial statements and records;
 - (b) The trust accounts required by KRS 380.040(1)(b);
 - (c) The registrant's compliance with the requirements of KRS Chapter 380; and
 - (d) The registrant's compliance with the requirements of this administrative regulation.
- (2) The Commonwealth of Kentucky Debt Adjuster Audit Checklist, Form DA-2, shall be used for purposes of the annual audit and filed with the results of the annual audit.
- (3) The results of the audit and the auditor's opinion filed with the division shall be accompanied by a certification from each individual auditor joining in the opinion. The certification shall include:
 - (a) The auditor is an independent, third-party certified public accountant;
 - (b) The states in which the auditor is licensed as a certified public accountant; and
 - (c) The identification number for each license.
- (4) The results of the audit and the auditor's opinion, and the certification by each auditor, shall be filed with each renewal registration form, and shall be no older than twelve (12) months prior to the date of filing of the renewal registration form.

Section 5. The trust accounts required by KRS 380.040(1)(b) shall be maintained in a federally insured financial institution.

Section 6.

- (1) A person engaged in debt adjusting shall notify the division in writing at the address shown in Section 2(1)(b) of this administrative regulation, or by electronic mail or fax with prior approval of the division, within five (5) business days of any cancellation, nonrenewal, modification, or change, or receipt of notice of any cancellation,

nonrenewal, modification, or change of, the insurance coverage required by KRS 380.040(7), the bond required by KRS 380.040(8) and this regulation, or the irrevocable letter of credit accepted in lieu of the bond pursuant to KRS 380.040(8) and this administrative regulation.

(2) Except as required by subsection (1) of this section, within thirty (30) days of any material change in the information provided on or submitted with the registration form, a registrant shall notify the division in writing at the address shown in Section 2(1)(b) of this administrative regulation, or by electronic mail or fax with prior approval of the division, of each change and submit an updated registration form. The annual renewal date for the registrant shall not be affected by the filing required by this section.

(3) A notice or letter from the division to a registrant may be sent by first-class regular mail to a last-known address as shown in the registrant's last filing with the division.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) The "Commonwealth of Kentucky Debt Adjuster Registration Statement", Form DA-1, July 2010;

(b) The "Commonwealth of Kentucky Debt Adjuster Audit Checklist", Form DA-2, July 2010;

(c) The "Commonwealth of Kentucky Debt Adjuster Bond", Form DA-3, July 2010;
and

(d) The "Commonwealth of Kentucky Debt Adjuster Irrevocable Letter of Credit", Form DA-4, July 2010.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of the Attorney General, Consumer Protection Division, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(31 Ky.R. 1916; Am. 32 Ky.R. 227; eff. 8-25-2005; 37 Ky.R. 741; eff. 11-05-2010; Crt eff. 2-21-2020.)