



REQUEST FOR COMMENTS

Notice and Request for Comment – Publication of proposed Financial and Consumer Services Commission Rule CDSS-001 *Debt Settlement Services* (the Proposed Rule).

Background

On 18 December 2017, the Financial and Consumer Services Commission (Commission) approved publication in order to obtain comments on the Proposed Rule.

Purpose of the Proposed Rule

The purpose of the Proposed Rule is to support the regulatory framework set out in the *Collection and Debt Settlement Services Act* (the Act). The Act imposes standards of practice and disclosure obligations on licensees, while the Proposed Rule specifies those requirements.

Request for Comment

The Commission seeks comments on the Proposed Rule.

How to Provide your Comments

Comments are to be provided, in writing, by no later than **5 March 2018** to:

Secretary

Financial and Consumer Services Commission

85 Charlotte Street, Suite 300

Saint John, N.B. E2L 2J2

Telephone: 506-658-3060

Toll Free: 866-933-2222 (within NB only)

Fax: 506-658-3059

E-mail: info@fcb.ca

We cannot keep submissions confidential. A summary of the written comments received during the comment period may be published.

Questions

If you have any questions, please refer them to:

Alaina Nicholson

Acting Director, Consumer Affairs

Financial and Consumer Services Commission

Tel: 506-444-3156

Email: alaina.nicholson@fcb.ca

**FINANCIAL AND CONSUMER SERVICES COMMISSION
RULE CDSS-001 *Debt Settlement Services***

**PART 1
PRELIMINARY MATTERS**

Definitions

1. (1) In this Rule:

“Act” means the *Collection and Debt Settlement Services Act*.

(2) The definitions contained in the Act apply to this Rule, unless the terms in question are defined in this Rule.

**PART 2
DEBT SETTLEMENT SERVICES AGREEMENT**

Prohibited Representations

2. (1) Pursuant to section 9.01 of the Act, a collection agency or collector is prohibited from communicating or causing to be communicated any representation relating to a debt settlement services agreement that:

- (a) restricts the debtor from having access to his or her credit report, or make any oral or written representation suggesting that the debtor is restricted from having such access;
- (b) restricts the debtor from communicating with his or her creditors;
- (c) provides debt settlement services under a name other than the collection agency’s or collector’s registered name;
- (d) provides information about a debtor’s debts to any person except the debtor, a guarantor of the debt, the debtor’s designated representative or a creditor of the debtor without the debtor’s written consent;
- (e) misrepresents the time needed to achieve the results promised by the collection agency or collector; or
- (f) gives any person false or misleading information.

Debt Settlement Services Agreement

- 3. (1)** Pursuant to subsection 9.02(1)(a) of the Act, a collection agency must include the following terms and information in the debt settlement services agreement with the debtor:
- (a) The first page of the agreement shall be the document entitled “Settling Debt—What You Need to Know” which is available on the Commission’s website;
 - (b) The name, address and telephone number of the debtor and information respecting other ways, if any, in which the debtor can be contacted by the collection agency, such as an e-mail address;
 - (c) The collection agency’s registered name, principal business address in New Brunswick, telephone number, and information respecting other ways, if any, in which the collection agency can be contacted by the debtor, such as the fax number and e-mail address of the collection agency, as well as website address if available;
 - (d) The date on which the agreement was entered into;
 - (e) The proposed termination date of the agreement, together with the statement that the termination date is subject to the rule specified in subsection 2;
 - (f) An itemized list of all services that will be provided under the agreement;
 - (g) The details of all the debts to which the agreement applies, including each creditor’s name, the total amount owed to each creditor and the interest rate applicable to each debt;
 - (h) The total amount owed by the debtor to all creditors under the agreement;
 - (i) Any restrictions, limitations and conditions under the agreement;
 - (j) The date and signature of the debtor, the collection agency and the collector who dealt with the debtor at the time the agreement was signed;
 - (k) The total amount payable by the debtor to the collection agency and the terms and methods of payment; and
 - (l) The portion, expressed in dollars and cents, of the total amount payable that is attributable to each service or good to be supplied under the agreement.
- (2)** Unless a termination provision set out in the agreement provides for an earlier termination date, the agreement terminates 18 months after the later of,
- (a) the date the agreement was entered into,
 - (b) the last day on which a payment was made in connection with the agreement, or
 - (c) if any debts to which the agreement applies are settled by or through the collection agency, the last day on which such a settlement occurred.
- (3)** The collection agency must inform a debtor’s creditors that the collection agency or collector is authorized to arrange or negotiate a schedule of payments or a one-time payment on the debtor’s behalf, within 15 days of becoming authorized.

Amending, renewing or extending agreement

4. **(1)** A debt settlement services agreement may be amended, renewed or extended whether or not the agreement provides for amendment, renewal or extension by the express agreement of the debtor and collection agency.
- (2)** If a debt settlement services agreement is amended, renewed or extended, the debtor may, without any reason, cancel the agreement at any time from the date that the amendment is agreed to until 10 days after receiving the written copy of the amended agreement, and sections 9.06 and 9.07 of the Act apply to the cancellation.
- (3)** No amendment, extension or renewal of a debt settlement services agreement is effective unless the amendment, extension or renewal agreement meets all the requirements in the Act and this Rule.
- (4)** An amendment to a debt settlement services agreement does not retroactively affect rights and obligations acquired by the debtor before the effective date of the amendment, and does not affect any debt that has already been settled under the agreement.
- (5)** Unless a termination provision set out in the agreement provides for an earlier termination date, the agreement terminates 18 months after the later of,
- (a) the date the agreement was entered into;
 - (b) the last day on which a payment was made in connection with the agreement; or
 - (c) if any debts to which the agreement applies are settled by or through the collection agency, the last day on which such a settlement occurred.

Restrictions on payments for services

5. **(1)** Pursuant to section 9.03(2) of the Act, a collection agency or collector shall not require or accept any payment or security for payment for its services in advance of providing the services in respect of a debt owed by a debtor to a creditor until,
- (a) the debtor and the collection agency have entered into a valid debt settlement services agreement in accordance with the Act and this Rule;
 - (b) the debtor has entered into an agreement with the creditor regarding the amount to be paid by the debtor to the creditor to settle the debt;
 - (c) the debtor has made at least one payment under an agreement mentioned in clause (b); and
 - (d) the collection agency has written evidence of the debtor's payment mentioned in clause (c).
- (2)** If a collection agency provides debt settlement services to a debtor in respect of more than one creditor, the collection agency shall not require or accept payment or security for payment for its services in respect of any given creditor until the conditions mentioned in subsection 1 have been met in respect of the creditor.

(3) For purposes of subsection 9.03(2) of the Act, the maximum amount that may be collected from debtor as payment or security must not exceed

- (a) in the case of a debt settlement agreement that includes a schedule of payments, the greater of
 - (i) 15% of the money actually collected from the debtor for distribution to his or her creditors; and
 - (ii) \$20; or
- (b) in the case of a one-time payment to a creditor or creditors, or an agreement to make arrangements or negotiate on the debtor's behalf with the creditor or creditors identified in the debt settlement agreement, 10% of the debt owing.

**PART 3
COMING INTO FORCE**

5. This Rule comes into force on *[Insert Date]*.

Settling Debt - What You Need to Know*

Know your consumer rights

- You cannot be charged any fees unless your creditors accept the offer of a settlement of your debt.
- You have the right to cancel this contract within 10 days after receiving a written copy of it and you do not need a reason to cancel.

To cancel:

1. Tell the collection agency in writing (i.e., by letter delivered in person, by email, registered mail, prepaid courier or fax). The address is set out below.
2. Keep a copy of the written cancellation notice to provide proof of the date you gave your notice.

What to consider before you sign the contract

- A debt settlement program may not be right for you. Consider other ways you could pay off your debts, such as negotiating a repayment plan with your creditors on your own.
- Renegotiating your debts, including using these services, may lower your credit rating or credit score. Your credit rating is used by lenders and creditors, insurance companies, landlords and potential employers to assess applications for items such as loans, lines of credit, credit cards, insurance, apartment rentals and employment.
- Your interest rates may increase during the time that your debt remains unpaid. This may increase the amount you have to pay back to your creditors.
- Your creditors may not agree to a settlement.

Contact information:

Collection Agency name:	
Collector name:	
Mailing address:	
Email:	
Telephone:	
Fax:	

I have read this document:

Your signature

Date

***New Brunswick's *Collection and Debt Settlement Services Act* requires this to be the first page of any debt settlement services agreement.**

FCNB is New Brunswick's independent regulator for financial and consumer services. FCNB is not affiliated with, nor does it endorse any collection agency or debt settlement services company.

You can learn more about your consumer rights or file a complaint with FCNB about a business by contacting us at:
Toll Free 1 866 933-2222 | Facsimile 506 658-3059 | email info@fcnb.ca | fcnb.ca