

## **Chapter 49** **Immigration Consultants Registration Act**

### **Part 1** **General Provisions**

#### **13-49-101 Title.**

This chapter is known as the "Immigration Consultants Registration Act."

Enacted by Chapter 375, 2012 General Session

#### **13-49-102 Definitions.**

As used in this chapter:

- (1) "Client" means a person who receives services from or enters into an agreement to receive services from an immigration consultant.
- (2) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a person for or in consideration of:
  - (a) services;
  - (b) personal or real property; or
  - (c) another thing of value.
- (3) "Department" means the Department of Commerce.
- (4) "Division" means the Division of Consumer Protection in the department.
- (5) "Immigration consultant" means an individual who provides nonlegal assistance or advice on an immigration matter including:
  - (a) completing a document provided by a federal or state agency, but not advising a person as to the person's answers on the document;
  - (b) translating a person's answer to a question posed in a document provided by a federal or state agency;
  - (c) securing for a person supporting documents, such as a birth certificate, that may be necessary to complete a document provided by a federal or state agency;
  - (d) submitting a completed document on a person's behalf and at the person's request to the United States Citizenship and Immigration Services; or
  - (e) for valuable consideration, referring a person to a person who could undertake legal representation activities in an immigration matter.
- (6) "Immigration matter" means a proceeding, filing, or action affecting the immigration or citizenship status of a person that arises under:
  - (a) immigration and naturalization law;
  - (b) executive order or presidential proclamation; or
  - (c) action of the United States Citizenship and Immigration Services, the United States Department of State, or the United States Department of Labor.

Amended by Chapter 236, 2015 General Session

### **Part 2** **Registration Requirements**

**13-49-201 Requirement to be registered as an immigration consultant -- Exemptions.**

- (1)
  - (a) Except as provided in Subsection (1)(b), an individual may not engage in an activity of an immigration consultant for compensation unless the individual is registered under this chapter.
  - (b) Except for Subsections 13-49-303(3) and (4), this chapter does not apply to an individual authorized:
    - (i) to practice law in this state; or
    - (ii) by federal law to represent an individual before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.
- (2) An immigration consultant may only offer nonlegal assistance or advice in an immigration matter.

Amended by Chapter 348, 2016 General Session

**13-49-202 Application for registration.**

- (1) To register as an immigration consultant an individual shall:
  - (a) submit an annual application in a form prescribed by the division;
  - (b) pay an annual registration fee determined by the department in accordance with Section 63J-1-504, which includes the costs of the criminal background check required under Subsection (1)(e);
  - (c) have good moral character in that the individual has not been convicted of:
    - (i) a felony; or
    - (ii) within the last 10 years, a misdemeanor involving theft, fraud, or dishonesty;
  - (d) submit fingerprint cards in a form acceptable to the division at the time the application is filed; and
  - (e) consent to a fingerprint background check of the individual by the Utah Bureau of Criminal Identification regarding the application.
- (2) The division shall register an individual who qualifies under this chapter as an immigration consultant.

Amended by Chapter 236, 2015 General Session

**13-49-203 Requirement to submit to criminal background check.**

- (1) The division shall require an applicant for registration as an immigration consultant to:
  - (a) submit a fingerprint card in a form acceptable to the division; and
  - (b) consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.
- (2)
  - (a) The division shall obtain information from a criminal history record maintained by the Utah Bureau of Criminal Identification pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.
  - (b) The information obtained under Subsection (2)(a) may only be used by the division to determine whether an applicant for registration as an immigration consultant meets the requirements of Subsection 13-49-202(1)(c).

Amended by Chapter 348, 2016 General Session

**13-49-204 Bonds -- Exemption -- Statements dependent on posting bond.**

- (1) An immigration consultant shall post a cash bond or surety bond:
  - (a) in the amount of \$50,000; and
  - (b) payable to the division for the benefit of any person damaged by a fraud, misstatement, misrepresentation, unlawful act, omission, or failure to provide services of an immigration consultant, or an agent, representative, or employee of an immigration consultant.
- (2) A bond required under this section shall be:
  - (a) in a form approved by the division; and
  - (b) conditioned upon the faithful compliance of an immigration consultant with this chapter and division rules.
- (3) An immigration consultant shall keep the bond required under this section in force for one year after the immigration consultant's registration expires or the immigration consultant notifies the division in writing that the immigration consultant has ceased all activities regulated under this chapter.
- (4)
  - (a) If a surety bond posted by an immigration consultant under this section is canceled due to the immigration consultant's negligence, the division may assess a \$300 reinstatement fee.
  - (b) No part of a bond posted by an immigration consultant under this section may be withdrawn:
    - (i) during the one-year period the registration under this chapter is in effect; or
    - (ii) while a revocation proceeding is pending against the immigration consultant.
- (5)
  - (a) A bond posted under this section by an immigration consultant may be forfeited if the immigration consultant's registration under this chapter is revoked.
  - (b) Notwithstanding Subsection (5)(a), the division may make a claim against a bond posted by an immigration consultant for money owed the division under this chapter without the division first revoking the immigration consultant's registration.
- (6) An individual may not disseminate by any means a statement indicating that the individual is an immigration consultant, engages in the business of an immigration consultant, or proposes to engage in the business of an immigration consultant, unless the individual has posted a bond under this section that is maintained throughout the period covered by the statement.
- (7) An immigration consultant may not make or authorize the making of an oral or written reference to the immigration consultant's compliance with the bonding requirements of this section except as provided in this chapter.

Amended by Chapter 236, 2015 General Session

### **Part 3**

### **Operational Requirements**

#### **13-49-301 Requirements for written contract -- Prohibited statements.**

- (1)
  - (a) Before an immigration consultant may provide services to a client, the immigration consultant shall provide the client with a written contract. The contents of the written contract shall comply with this section and rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (b) A client may cancel a written contract on or before midnight of the third business day after execution of the written contract, excluding weekends and state and federal holidays.

- (2) A written contract under this section shall be stated in both English and in the client's native language.
- (3) A written contract under this section shall:
  - (a) state the purpose for which the immigration consultant has been hired;
  - (b) state the one or more services to be performed;
  - (c) state the price for a service to be performed;
  - (d) include a statement printed in 10-point boldface type that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs;
  - (e) with regard to a document to be prepared by the immigration consultant:
    - (i) list the document to be prepared;
    - (ii) explain the purpose of the document;
    - (iii) explain the process to be followed in preparing of the document;
    - (iv) explain the action to be taken by the immigration consultant;
    - (v) state the agency or office where each document will be filed; and
    - (vi) state the approximate processing times according to current published agency guidelines;
  - (f) include a provision stating that the person may report complaints relating to an immigration consultant to the:
    - (i) division, including a toll-free telephone number and Internet web site; and
    - (ii) Office of Immigrant Assistance of the United States Department of Justice, including a toll-free telephone number and Internet website;
  - (g) include a provision stating that complaints concerning the unauthorized practice of law may be reported to the Utah State Bar, including a toll-free telephone number and Internet website; and
  - (h) in accordance with Subsection (1)(b), include a provision stating in bold on the first page of the written contract in both English and in the client's native language in accordance with Subsection (2): "You may cancel this contract on or before midnight of the third business day after execution of the written contract."
- (4) A written contract may not contain a provision relating to the following:
  - (a) a guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise; or
  - (b) a statement that the immigration consultant can or will obtain a special favor from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.
- (5) An immigration consultant may not make a statement described in Subsection (4) orally to a client.
- (6) A written contract is void if not written in accordance with this section.

Amended by Chapter 236, 2015 General Session

**13-49-302 Accounting for services -- Receipts.**

- (1) An immigration consultant shall provide a signed receipt to a client for each payment made by that client. The receipt shall be typed or computer generated on the immigration consultant's letterhead.
- (2) An immigration consultant shall make a statement of accounting for the services rendered and payments made:
  - (a) in the client's native language;
  - (b) to the client every two months;

- (c) that is typed or computer generated on the immigration consultant's letterhead;
- (d) that lists the individual charges and total charges for services; and
- (e) that lists the payments made by the client.

Enacted by Chapter 375, 2012 General Session

**13-49-303 Notice to be displayed -- Disclosure to be provided in writing.**

- (1) An immigration consultant shall conspicuously display in the immigration consultant's office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the immigration consultant's clientele, that contains the following information:
  - (a) the full name, address, and evidence of compliance with any applicable bonding requirement including the bond number;
  - (b) a statement that the immigration consultant is not an attorney; and
  - (c) the name of each immigration consultant employed at each location.
- (2)
  - (a) Before providing any services, an immigration consultant shall provide a client with a written disclosure in the native language of the client that includes the following:
    - (i) the immigration consultant's name, address, and telephone number;
    - (ii) the immigration consultant's agent for service of process;
    - (iii) evidence of compliance with any applicable bonding requirement, including the bond number; and
    - (iv) a list of the services that the immigration consultant provides and the current and total fee for each service.
  - (b) An immigration consultant shall obtain the signature of the client verifying that the client received the written disclosures described in Subsection (2)(a) before a service is provided.
- (3)
  - (a) Except as provided in Subsections (3)(b) and (3)(c), an immigration consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as an immigration consultant, shall include in that advertisement a clear and conspicuous statement that the immigration consultant is not an attorney.
  - (b) Subsection (3)(a) does not apply to an immigration consultant who is not licensed as an attorney in any state or territory of the United States, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services. A person described in this Subsection (3)(b) shall include in an advertisement for services as an immigration consultant a clear and conspicuous statement that the immigration consultant is not an attorney, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.
  - (c) Subsection (3)(a) does not apply to a person who is not an active member of the Utah State Bar, but is an attorney licensed in another state or territory of the United States and is admitted to practice before the Board of Immigration Appeals or the United States Citizenship and Immigration Services. A person described in this Subsection (3)(c) shall include in any advertisement for immigration services a clear and conspicuous statement that the person is not an attorney licensed to practice law in this state, but is an attorney licensed in another state or territory of the United States, and is authorized by federal law to represent persons

before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.

- (4) If an advertisement subject to this section is in a language other than English, the statement required by Subsection (3) shall be in the same language as the advertisement.

Amended by Chapter 236, 2015 General Session

**13-49-304 Translations -- Prohibited acts.**

- (1) For purposes of this section, "literal translation" of a word or phrase from one language means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.
- (2) An immigration consultant may not, with the intent to mislead, literally translate, from English into another language, words or titles, including, "notary public," "notary," "licensed," "attorney," "lawyer," or any other terms that imply that the immigration consultant is an attorney, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material describing the immigration consultant.

Amended by Chapter 236, 2015 General Session

**13-49-305 Documents -- Treatment of original documents.**

- (1) An immigration consultant shall deliver to a client a copy of a document completed on behalf of the client. An immigration consultant shall include on a document delivered to a client the name and address of the immigration consultant.
- (2) An immigration consultant shall retain a copy of a document of a client for not less than three years from the date of the last service to the client.
- (3)
  - (a) An immigration consultant shall return to a client all original documents that the client has provided to the immigration consultant in support of the client's application including an original birth certificate, rental agreement, utility bill, employment document, a registration document issued by the Division of Motor Vehicles, or a passport.
  - (b) An original document that does not need to be submitted to immigration authorities as an original document shall be returned by the immigration consultant immediately after making a copy.

Amended by Chapter 236, 2015 General Session

**Part 4  
Prohibited Acts and Penalties**

**13-49-401 Unlawful acts.**

- (1) It is unlawful for an immigration consultant to:
  - (a) make a false or misleading statement to a client while providing services to that client;
  - (b) make a guarantee or promise to a client, unless the guarantee or promise is in writing and the immigration consultant has some basis in fact for making the guarantee or promise;
  - (c) make a statement that the immigration consultant can or will obtain a special favor from or has special influence with the United States Citizenship and Immigration Services, or any

other governmental agency, employee, or official, that may have a bearing on a client's immigration matter; or

- (d) charge a client a fee for referral of the client to another person for services that the immigration consultant cannot or will not provide to the client.
- (2) A sign describing the prohibition described in Subsection (1)(d) shall be conspicuously displayed in the office of an immigration consultant.

Enacted by Chapter 375, 2012 General Session

**13-49-402 Violations -- Actions by division.**

- (1) The division may make an investigation the division considers necessary to determine whether a person is violating, has violated, or is about to violate this chapter or any rule made or order issued under this chapter. As part of the investigation, the division may:
- (a) require a person to file a statement in writing;
  - (b) administer oaths, subpoena witnesses and compel their attendance, take evidence, and examine under oath any person in connection with an investigation; and
  - (c) require the production of any books, papers, documents, merchandise, or other material relevant to the investigation.
- (2) A person who violates this chapter is subject to:
- (a) a cease and desist order; and
  - (b) an administrative fine of not less than \$1,000 or more than \$5,000 for each separate violation.
- (3) An administrative fine shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.
- (4)
- (a) A person who intentionally violates this chapter:
    - (i) is guilty of a class A misdemeanor; and
    - (ii) may be fined up to \$10,000.
  - (b) A person intentionally violates this part if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.

Amended by Chapter 236, 2015 General Session

**13-49-403 Action by attorney general or district or county attorney.**

- (1) Upon referral from the division, the attorney general or any district or county attorney may:
- (a) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this part;
  - (b) bring an action in any court of competent jurisdiction for the collection of penalties authorized under Subsection 13-49-402(2); or
  - (c) bring an action under Subsection 13-49-402(4).
- (2) A court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of this part if proof of loss is submitted to the satisfaction of the court.

Enacted by Chapter 375, 2012 General Session

**13-49-404 Recovery of losses.**

In addition to any other remedies, a person suffering pecuniary loss because of a violation by another person of this chapter may bring an action in any court of competent jurisdiction and may recover:

- (1) the greater of \$500 or twice the amount of the pecuniary loss; and
- (2) court costs and reasonable attorney fees as determined by the court.

Enacted by Chapter 375, 2012 General Session