

Addendum to Massachusetts Secretary of State Regulation Filing Form
940 CMR 35:00, *Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19*

Compliance with M.G.L. c. 30A – Emergency Adoption

Infections caused by a new coronavirus—Coronavirus Disease 2019 (COVID-19)—have caused substantial economic and medical hardship for the residents of the Commonwealth. To prevent further spread of the disease, Massachusetts residents have largely been required to stay at home, and many have lost employment or income as a direct or indirect result. Those who have contracted the disease caused by COVID-19 can suffer a severe and prolonged illness and must be quarantined for a substantial period of time. The prevalence of the virus has placed an enormous strain on the Commonwealth’s medical professionals and medical facilities. Accordingly, the Governor of Massachusetts declared a State of Emergency on March 10, 2020, by means of Executive Order No. 591: Declaration of State of Emergency to Respond to COVID-19.

Under the present circumstances, certain practices by creditors and debt collectors are unfair and deceptive and violate the Massachusetts Consumer Protection Act, M.G.L. c. 93A. Pursuant to the Attorney General’s authority to issue regulations interpreting c. 93A, the Attorney General’s Office (AGO) adopts and issues the following regulations, 940 CMR 35:00, *Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19*. Because the economic and medical crisis faced by Massachusetts residents is acute and continues to escalate, the AGO issues these regulations on an emergency basis. The AGO finds that the immediate amendment of 940 CMR 35:00 is necessary for the preservation of the public health, safety and general welfare, and that observance of the requirements of notice and a public hearing set forth in M.G.L. c. 30A, sec. 2, would be contrary to the public interest.

940 CMR 35:00: Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19

35.01 Authority, Purpose and Scope

(1) Authority: 940 CMR 35.00 is issued pursuant to M.G.L. c. 30A, §§ 2 and 3, and M.G.L. c. 93A, sec. 2.

(2) Purpose and Scope: The purpose of 940 CMR 35.00 is to provide emergency regulations to protect consumers from unfair and deceptive debt collection practices during the State of Emergency declared by the Governor of Massachusetts on March 10, 2020 pursuant to Executive Order No. 591: Declaration of State of Emergency to Respond to COVID-19.

35.02 Definitions

“Collect,” “collection,” or “collecting” shall refer to any means, communication, or attempt to obtain payment on a debt or other past due balance owed or alleged to be owed.

“Collection Lawsuit” means any legal proceeding, including but not limited to civil actions, statements of small claims and supplementary process actions, commenced in any court for the purpose of collecting any debt or other past due balance owed or alleged to be owed.

“Communication” or “Communicating” as used herein shall share the same meaning as defined in 940 CMR 7.03.

“Creditor” as used herein shall share the same meaning as defined in 940 CMR 7.03. For the avoidance of doubt, the term creditor shall include debt collectors as defined herein.

“Debt” as used herein shall share the same meaning as defined in 940 CMR 7.03.

“Debtor” as used herein shall share the same meaning as defined in 940 CMR 7.03.

“Debt collector” means any person or business whose principal purpose is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. The term debt collector shall also include any person who buys or acquires debt that is in default at the time of purchase or acquisition and who seeks to collect such debt. The term debt collector shall include a creditor who, in the process of collecting his own debt, uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt. The term debt collector shall also include a person in a business the principal purpose of which is the enforcement of security interests. Debt collector shall not include:

- (a) an officer or employee of a creditor that is not itself a debt collector, while, in the name of such creditor, collecting debts for such creditor;

- (b) a person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for a person to whom it is so related or affiliated and if the principal business of the person is not the collection of a debt;
- (c) an officer or employee of the United States or a state of the United States to the extent that collecting or attempting to collect a debt is in the performance of his official duty;
- (d) a person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of a debt;
- (e) a nonprofit organization which, at the request of a consumer, performs bona fide consumer credit counseling and assists the consumer in the liquidation of debts by receiving payments from the consumer and distributing the amounts to creditors; and
- (f) a person collecting or attempting to collect a debt owed or due or asserted to be owed or due another to the extent the activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by the person; (iii) concerns a debt which was not in default at the time it was obtained by the person; or (iv) concerns a debt obtained by the person as a secured party in a commercial credit transaction.

“State of Emergency Period” shall refer to the time from one business day following the effective date of these regulations, through thirty days following the lifting of the state of emergency so declared by the Governor, or his or her designee.

35.03: Prohibitions on Debt Collection Activity with Regard to All Creditors, Including Debt Collectors

- (1) For the ninety (90) days following the effective date of this regulation or until the State of Emergency Period expires, whichever occurs first, it is an unfair or deceptive act or practice for any creditor, including a debt collector, to:
 - (a) initiate, file, or threaten to file any new collection lawsuit;
 - (b) initiate, threaten to initiate, or act upon any legal or equitable remedy for the garnishment, seizure, attachment, or withholding of wages, earnings, property or funds for the payment of a debt to a creditor;
 - (c) initiate, threaten to initiate, or act upon any legal or equitable remedy for the repossession of any vehicle;
 - (d) apply for, cause to be served, enforce, or threaten to apply for, cause to be served or enforce any capias warrant;

- (e) visit or threaten to visit the household of a debtor at any time;
- (f) visit or threaten to visit the place of employment of a debtor at any time; and
- (g) confront or communicate in person with a debtor regarding the collection of a debt in any public place at any time.

(2) Paragraph (1)(a) through (g), inclusive, of this Section shall not apply to any attempt to collect a debt which is, or is alleged to be, owing as a result of a loan secured by a mortgage on real property, or to any attempt to collect a debt that is, or is alleged to be, owing by a tenant to an owner, as those terms are defined by 940 CMR 3:01.

(3) Paragraph (1)(e) of this Section shall not apply to telephone, gas, and electric utility companies regulated by M.G.L. c. 164 and the Department of Public Utilities or the Department of Telecommunications and Cable.

35.04: Prohibition on Debt Collection Telephone Calls with Regard to Debt Collectors Only

(1) For the ninety (90) days following the effective date of this regulation or until the State of Emergency Period expires, whichever occurs first, it shall be an unfair or deceptive act or practice for any debt collector to initiate a communication with any debtor via telephone, either in person or by recorded audio message to the debtor's residence, cellular telephone, or other telephone number provided by the debtor as his or her personal telephone number, provided that a debt collector shall not be deemed to have initiated a communication with a debtor if the communication by the debt collector is in response to a request made by the debtor for said communication.

(2) Paragraph (1) of this section shall not apply to communications initiated solely for the purpose of informing a debtor of a rescheduled court appearance date or discussing a mutually convenient date for a rescheduled court appearance.

(3) Paragraph (1) of this section shall not apply to (a) any attempt to collect a debt which is, or is alleged to be, owing as a result of a loan secured by a mortgage on real property; or (b) any attempt to collect a debt that is, or is alleged to be, owing by a tenant to an owner, as those terms are defined by 940 CMR 3:01.

35.05: Relation to Other Law and Regulations

(1) 940 CMR 35.00 does not exempt any person from complying with existing laws or rules of professional conduct with respect to debt collection practices. 940 CMR 35.00 is not intended to supersede or in any way limit rights and protections provided to consumers under 114.6 CMR 13.00, the Health Safety Net Eligible Services Regulations, and state and federal foreclosure laws. To the extent that any provision of 940 CMR 35.00 is specifically inconsistent with the Massachusetts Rules of Professional Conduct, as currently appearing in Supreme Judicial Court Rule 3:07 and then only to the extent of the inconsistency, 940 CMR 35:00 is not applicable.

(2) This emergency regulation is intended to supplement 940 CMR 7.00. To the extent that any provision of 940 CMR 35.00 is determined to be specifically inconsistent with any provision of 940 CMR 7.00, such provision of 940 CMR 35.00 shall temporarily replace the provisions of 940 CMR 7.00 during the State of Emergency Period.