

Alert: Massachusetts AG Amends Debt Collection Regulations - Effective Immediately

Consumer Finance Alert

March 2, 2012

On March 1, 2012, the Massachusetts Attorney General exercised its authority under the Massachusetts Consumer Protection Act to promulgate regulations prohibiting unfair and deceptive acts or practices by amending regulations applicable to the collection of debt. See Mass Gen. Laws ch. 93A § 2(c); Mass. Regs. Code tit. 940 §§ 7.01 through 7.11. The debt collection regulations were initially promulgated in the 1970's and Attorney General Martha Coakley decided they "had not been amended to keep pace with changing technology." However, the amended regulations do much more than address new technology - they expand the scope of the regulations; create new obligations on creditors, passive debt buyers and third party collectors; place additional restrictions on collections communications and place additional restrictions on what can be collected. These new regulations are onerous and require immediate changes to collection practices in Massachusetts.

These regulations apply in addition to the federal Fair Debt Collection Practices Act ("FDCPA"), if applicable. Compliance with the FDCPA alone will not satisfy the requirements under the Massachusetts Debt Collection regulations. Pursuant to the Massachusetts Debt Collection regulations, the FDCPA preempts the regulations only to the extent that the FDCPA mandates actions or procedures prohibited by the Massachusetts Debt Collection regulations.

The following alert highlights key changes to these regulations.

The Massachusetts debt collection regulations apply to all creditors. "Creditor" is defined as "any person and his agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him by a debtor and shall also include a buyer of delinquent debt who hires a third party or an attorney to collect such debt." Mass. Regs. Code tit. 940 § 7.03. The only exception applies to legal process servers. There are no exemptions for any particular type of creditor, like a state or federally chartered bank.

The Massachusetts debt collection regulations apply to all consumer purpose credit. "Debt" is defined as "money or its equivalent which is, or is alleged to be, more than 30 days past due and owing, unless a different period is agreed to by the debtor, under a single account as a result of a purchase, lease, or loan of goods, services, or real or personal property, for personal, family or household purposes or as a result of a loan of money which is obtained for personal, family or household purposes whether or not the obligation has been reduced to judgment." Mass. Regs. Code tit. 940 § 7.03. The prior version of the regulation excluded first mortgages and loans in excess of \$25,000 from the definition of "debt." Those exclusions were removed, making the debt collection regulations generally applicable to all consumer purpose credit.

The Massachusetts debt collection regulations apply to all communications - not just oral communications. The prior version of the regulations defined "communication" as "conveying information directly or indirectly to any person orally through any medium." (emphasis added). The word "orally" was removed from this definition in the amended regulation to ensure that the restrictions on communications included text messages and other non-verbal communications. Mass. Regs. Code tit. 940 § 7.03.

The Massachusetts debt collection regulations limit contacts with the debtor. Under the amended regulations, a creditor may not initiate a communication with any debtor either manually, by text or by artificial message more than twice each seven-day period to the debtor's residence, cell phone or other telephone number provided by the debtor as his or her personal telephone number and not more than twice each thirty-day period to other numbers. Mass. Regs. Code tit. 940 § 7.04(1)(f).

The creditor is also prohibited from causing expense to the debtor in the form of text messages, download fees, data usage fees or similar charges unless the debtor provided the number as his or her personal telephone number (subject to limitations on the number of calls). Mass. Regs. Code tit. 940 § 7.04(1)(e).

Under the amended regulations, a creditor's collectors must disclose in all telephone communications "name of the business or company of the creditor" as well as the collector's first and last name (or first name and personal identifier maintained by the creditor). Mass. Regs. Code tit. 940 § 7.04(1)(d).

The Massachusetts debt collection regulations limit contacts with persons residing in the debtor's household. Under the amended regulations, creditors are prohibited from causing expense to any person residing in the debtor's household in the form of text messaging, download fees, data usage fees or similar charges. Mass. Regs. Code tit. 940 § 7.05(3). It appears that this may effectively prevent a creditor from calling a third party's cell phone and requires the creditor to determine whether a third party's telephone number is a cell phone.

The Massachusetts debt collection regulations limit contacts with other third parties. In addition to the limitations on communications with persons residing in the debtor's household, the amended regulations prohibit creditors from causing expense to any other person in the form of text messaging, download fees, data usage fees or similar charges. Mass. Regs. Code tit. 940 § 7.06(1)(c). It appears that this may effectively prevent a creditor from calling a third party's cell phone and requires the creditor to determine whether a third party's telephone number is a cell phone.

The Massachusetts debt collection regulations contain new prohibitions against specific unfair or deceptive acts or practices. Creditors are now prohibited from using any business, company or organization name other than the true name of the creditor's business, company or organization ("true name" does not appear to be defined). Mass. Regs. Code tit. 940 § 7.07(15).

There is also a new prohibition against the collection of any amount (including interest, fees, charges or expenses incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. Mass. Regs. Code tit. 940 § 7.07(16).

The amended regulations also require the disclosure of the telephone number and office hours of the creditor or his agents on all written communications to the debtor. Mass. Regs. Code tit. 940 § 7.07(22).

The Massachusetts debt collection regulations require creditors to provide a validation notice. Under the amended regulations, creditors are now required to provide a debt validation notice, similar to that required under the Fair Debt Collection Practices Act. The amended regulations require creditors, within five days of the initial communication in connection with the collection of a debt (defined as more than 30 days past due and owing), to provide the debtor or his or her attorney:

1. the amount of the debt;
2. the name of the creditor to whom the debt is owed;

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3. a statement that unless the debtor, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the creditor; and
4. a statement that if the debtor notifies the creditor in writing within the 30-day period, that the debt, or any portion thereof, is disputed, the creditor will cease collection of the debt, or any disputed portion thereof, until the creditor verifies the debt and provides the debtor or his attorney, by first class mail, the following:
 1. all documents, including electronic records or images, which bear the signature of the debtor and which concern the debt being collected;
 2. a ledger, account card, account statement copy or similar record, which reflects the date and amount of payments, credits, balances and charges;
 3. the name and address of the original creditor, if different from the collecting creditor; and
 4. a copy of any judgment against the debtor. Mass. Regs. Code tit. 940 § 7.08. The creditor must cease collection of the debt until it has made reasonable efforts to obtain and provide this information to the debtor.

The Massachusetts debt collection regulations limit the collection of time-barred debt. Under the amended regulations, creditors are now prohibited from collecting or attempting to collect from any person payment of any debt that the creditor knows, or has reason to know based on a good faith determination, is a time-barred. Mass. Regs. Code tit. 940 § 7.07(24).

Creditors are also prohibited from seeking or obtaining from any person an admission, affirmation, acknowledgement of a new promise to pay, or any waiver of legal rights or defenses with regard to any debt that the creditor knows or has reason to know is a time-barred debt, unless the creditor discloses that the debt may be unenforceable through a lawsuit because the time for filing suit may have expired, and that the debtor is not required by law to sign any admission, affirmation, or acknowledgement of, or new promise to pay the debt, or to make any payment on the debt, or to waive any rights with regard to the effect of the running of the applicable statute of limitations. Id. The amended regulations provide a specific safe harbor disclosure to comply with this new requirement.

The Massachusetts debt collection regulations are not the only requirements for third party debt collectors. Third party debt collectors are also subject to licensure and regulation by the Massachusetts Department of Banks. Mass. Gen. Laws ch. 93 §§ 24 through 28, 49. These obligations may not be consistent with the amended regulations promulgated by the Massachusetts Attorney General. We recommend that all third party debt collectors review their obligations under both sources of authority.

The Massachusetts Attorney General did not specify an effective date for these amended regulations. The amended regulations now appear as the "current" version of the regulations on the Attorney General's website and appear to be effective immediately.

These amended regulations mandate a number of new obligations on creditors that require careful review and consideration to ensure compliance. We will continue to update you with any developments.

For more information about the application of these amended regulations to your organization, please contact Lauren Campisi (, 504.596.2761) or any member our nationally renowned team of consumer financial services lawyers.