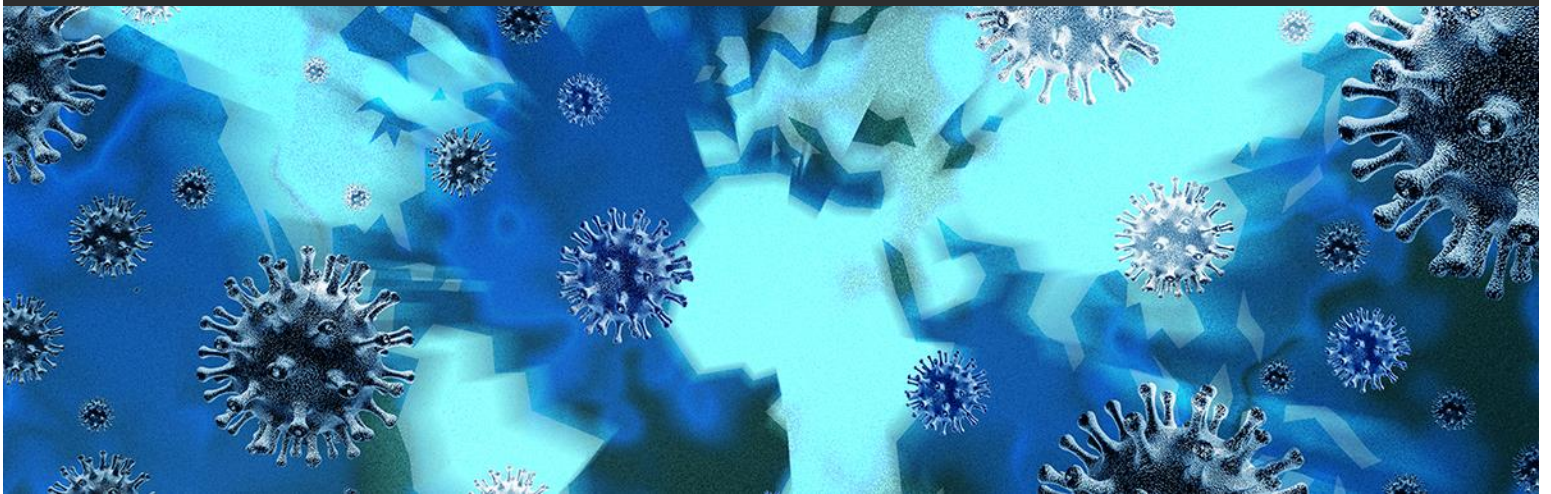


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



March 2020

Massachusetts AG Issues Emergency Regulation to Protect Consumers from Unfair and Deceptive Debt Collection Practices During COVID-19 State of Emergency

In light of the State of Emergency in Massachusetts, as declared by Governor Baker on March 10, 2020, the Massachusetts Office of the Attorney General (AG) issued a regulation on March 27, 2020 entitled “*Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19*” (940 C.M.R. § 35.00). The AG issued the new regulation pursuant to its authority under the Massachusetts Consumer Protection Act, M.G.L. c. 93A (Chapter 93A). The regulation is effective immediately and the protections provided therein will last for 90 days or for the duration of the State of Emergency Period, whichever occurs first.

The purpose of the new regulation is to protect Massachusetts consumers from unfair and deceptive debt collection practices during the State of Emergency and it is meant to supplement the Attorney General’s existing “Debt Collection Regulations” (940 C.M.R. 7.00). If any provision of the new regulation is inconsistent with the Debt Collection Regulations, the new provision governs during the State of Emergency Period. The Debt Collection Regulations are detailed in a GT Advisory, [The Massachusetts Debt Collection Regulations—Latest Consumer Class Action Trend](#).

The regulation provides specific and detailed definitions for: (i) “collect,” “collection,” or “collecting”; (ii) “collection lawsuit”; (iii) “communication” or “communicating”; (iv) “creditor”; (v) “debt”; (vi) “debtor”;

and (vii) “debt collector” that should be consulted to determine if the regulation impacts your specific activities in Massachusetts. In addition, the regulation splits its prohibitions into two substantive parts.

The first part prohibits certain debt collection activities by all creditors (including debt collectors). Specifically, the regulation provides as follows:

- (1) Debt collection activities with regard to all creditors (including debt collectors). 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.

Paragraph (1)(a) through (g) above do 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 C.M.R. 3:01. Paragraph (1)(e) above does 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.

The second part prohibits debt collection telephone calls by debt collectors only. Specifically, the regulation provides as follows:

- (2) Debt collection telephone calls with regard to debt collectors only. It is 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 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.

This paragraph does not apply to communications initiated solely for informing a debtor of a rescheduled court appearance date or discussing a mutually convenient date for a rescheduled court appearance. Also, the paragraph does 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 C.M.R. 3:01. The phrase

“initiate a communication” has been defined by the Massachusetts Supreme Judicial Court, as explained in the 2018 GT Advisory referenced above.

The AG’s office enforces its own regulations under Chapter 93A by conducting civil investigations and through enforcement actions. In doing so, the AG may seek restitution on behalf of all Massachusetts residents who suffer an ascertainable loss, plus a civil penalty of up to \$5,000 per violation if a seller knew or should have known the act or practice was in violation of Chapter 93A. Private consumers may bring their own claims under Chapter 93A and seek class-wide relief as well.

For more information and updates on the developing COVID-19 situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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