COVID-19: THE MASSACHUSETTS ATTORNEY GENERAL'S OFFICE ISSUES EMERGENCY REGULATIONS SIGNIFICANTLY LIMITING DEBT COLLECTION IN MASSACHUSETTS DURING PANDEMIC

Date: 20 April 2020

U.S. Financial Institutions and Services Litigation Alert

By: John ReVeal

The rapid spread of the Coronavirus Disease 2019 ("COVID-19") has caused unprecedented disruptions to the U.S. economy, both at the state and national levels.

On March 10, 2020, the Governor of Massachusetts declared a State of Emergency, imposed stringent social distancing measures, and ordered all "non-essential" businesses to cease in-person operations.[1] While these measures were intended to mitigate the impact of COVID-19, they also have caused many Massachusetts residents to experience significant financial hardships.

During this time of financial hardship occasioned by the COVID-19 pandemic, the Massachusetts Attorney General's Office ("AGO") issued a set of temporary regulations, on an emergency basis, prohibiting certain debt collection activities in Massachusetts for the duration of the COVID-19 emergency.[2] And while the emergency regulations may benefit consumers, they will also significantly impact the business operations of creditors and debt collectors operating in Massachusetts during this challenging period.

The emergency regulations, codified at 940 CMR 35.00, include two operative sections restricting debt collection activities in Massachusetts. Section 35.03 outlines "unfair or deceptive" practices applicable to both "creditors" and "debt collectors," whereas Section 35.04 outlines additional "unfair or deceptive" practices applicable only to "debt collectors."[3] A "creditor" is defined under the emergency regulations the same way that it is defined under the existing debt collection regulations:[4] "any person … engaged in collecting a debt owed or alleged to be owed to him or her by a debtor[.]"[5] The emergency regulations, however, clarify that the term "creditor" encompasses "debt collectors."[6] A "debt collector" is defined, in pertinent part, as "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."[7]

The emergency regulations went into effect on March 26, 2020, and are effective for 90 days following the effective date or until the State of Emergency Period[8] expires, whichever occurs first.[9] Section 35.03 of the emergency regulations provides that it is an "unfair or deceptive" practice for any creditor or debt collector to, among other things, (1) initiate, file, or threaten to file any new collection lawsuit; (2) initiate or threaten to initiate any garnishment of wages, earnings, property, or funds for the payment of a debt; (3) initiate, threaten to initiate, or act upon any remedy for the repossession of a vehicle; (4) visit or threaten to visit the household or place of

©2005-2026 K&L Gates LLP. All Rights Reserved.

employment of a debtor at any time; or (5) confront or communicate in person with a debtor regarding the collection of a debt in any public place at any time.[10]

In addition to those broad restrictions, Section 35.04 goes even further to specifically prohibit a “debt collector” from initiating any communications whatsoever with a debtor by telephone, including automated calls to the debtor's residence, cell phone, or any other telephone number provided by the debtor as his or her personal telephone number.[11] And, while the emergency regulations' restrictions are far-reaching, the AGO specifically exempted debt collection activities related to debts secured by a mortgage on real property or debt owed by a tenant to an owner of a dwelling.[12]

Although the emergency regulations are temporary, and apply for no more than 90 days unless extended, they create the potential for liability to creditors and debt collectors in Massachusetts — especially those seeking to collect debts related to auto loans and consumer credit cards. Rather than prohibiting certain acts, the AGO has declared those acts to be “unfair and deceptive,” thus creating immediate risk of liability under the Massachusetts Consumer Protection Law.[13] Thus, creditors and debt collectors in Massachusetts will need to act expeditiously to bring their business operations into compliance with the restrictions imposed under the emergency regulations.[14] We will continue to monitor efforts by the AGO and consumers alike to enforce the emergency regulations.

FOOTNOTES

[1] COVID-19 Order No. 13, Order Assuring Continued Operations of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More than 10 People.

[2] 940 CMR 35.00, et seq., Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19.

[3] Id. at 35.03, 35.04.

[4] 940 CMR 7.00, et seq.

[5] 940 CMR 35.02 (citing 940 CMR 7.03).

[6] Id.

[7] Id. at 35.02. The regulation further provides that the term “debt collector” specifically includes “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,” “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,” and “a person in a business the principal purpose of which is the enforcement of security interests.” Id. In addition, the regulation provides a number of categories of persons specifically not included within the definition of “debt collector,” including, but not limited to, “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 …concerns a debt which was originated by the person … [or] concerns a debt which was not in default at the time it was obtained by the person.” Id.

[8] The “State of Emergency Period” refers to “the time from one business day following the effective date of the[] [emergency] regulations, through thirty days following the lifting of the state of emergency so declared by the Governor, or his or her designee.” Id. at 35.02.

©2005-2026 K&L Gates LLP. All Rights Reserved.

[9] Id. at 35.03(1), 35.04(1).

[10] Id. at 35.03(1).

[11] Id. at 35.04(1). A “debt collector,” however, is not deemed to have initiated a communication with a debtor if the communication is made in response to a debtor's request for such a communication. Id.

[12] Id. at 35.03(2), 35.04(3). In addition, the emergency regulations specifically exempt 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 from the debt collection restrictions. Id. at 35.02(3).

[13] See M.G.L. c. 93A, § 9(3). Nothing in the emergency regulations, however, appears to obviate the requirement that a consumer serve a 30-day demand letter prior to filing suit under the Consumer Protection Law, which will mitigates the availability of multiple damages permitted thereunder. Id.

[14] While the debt collection industry may take umbrage with the AGO's broad restrictions, the Massachusetts Supreme Judicial Court has previously affirmed such broad authority to regulate the financial services industry under similar (albeit different) circumstances, namely the fallout from the financial crisis in the earlier part of the decade. See Commonwealth v. Fremont Inv. & Loan, 452 Mass. 733 (2008).

KEY CONTACTS



JOHN REVEAL
PARTNER

WASHINGTON, DC
+1.202.778.9055
JOHN.REVEAL@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.