

OFFICE OF THE ATTORNEY GENERAL
GUIDANCE WITH RESPECT TO DEBT COLLECTION REGULATIONS

On March 2, 2012, the Office of the Attorney General issued revised debt collection regulations (“the Regulations”), the purpose of which was to further define unfair or deceptive acts or practices in the collection of debts from persons within the Commonwealth of Massachusetts. The amended Regulations were issued following an extensive comment period and a public hearing on May 18, 2011. The new regulations took effect on March 2, 2012.

Since the Regulations were promulgated, the Office of the Attorney General has received inquiries concerning the scope and implementation of 940 CMR 7.08: Validation of Debts as well as certain other limited areas of concern.¹ In order to provide clarity on the issues raised in connection with compliance with these sections, and to assist in the implementation of the Regulations, the Office of the Attorney General issues this guidance.

“Initiating a Communication” Under 940 CMR 7.04(1)(f)

According to the Regulations, creditors may not initiate a communication with a debtor via telephone more than two times in a seven day period to a debtor’s home, cell, or personal telephone number. The goal of this provision is to not only limit the number of times a creditor can communicate with a debtor via telephone to try to collect a debt, but to also limit the fees that a creditor can impose on a debtor (thereby limiting voicemails and text messages to twice in a seven day period). Accordingly, unsuccessful attempts by a creditor to reach a debtor via telephone may not constitute initiation of communication if the creditor is truly unable to reach the debtor or to leave a message for the debtor. Notwithstanding this interpretation, the Office of the Attorney General may still consider enforcement action against any conduct, including initiation of communication via telephone, the natural consequence of which is to harass, oppress, or abuse a debtor.

Secured Creditors and 940 CMR 7.07(18)(d) and (19)

940 CMR 7.07(18)(d) and (19) do not preclude secured creditors from enforcing their rights against their collateral in accordance with valid enforceable mortgages or other valid enforceable security agreements.²

Creditors’ Validation Obligations Under 940 CMR 7.08

Communication in Connection with the Collection of a Debt

940 CMR 7.08(1) imposes particular requirements on creditors to provide certain disclosures to a debtor within five business days after the creditor initially communicates with a debtor about the “collection of a debt.” Certain factors the Attorney General’s Office will

¹ These areas include 940 CMR 7.04(1)(f) and 940 CMR 7.07(18) and (19).

² See Mass. Gen. Laws Ann. ch. 106, § 9-609 (West); U.C.C. Text § 9-609.

consider to determine whether a creditor has made a communication in connection with the collection of a debt include:

- Whether the communication demands payment or otherwise attempts to collect the debt.³
- Whether the communication is an attempt to induce the debtor to settle or discuss the debt.
- The relationship of the parties.⁴

Consistent with the articulated rationale for the federal validation provision⁵, 940 CMR 7.08 is intended to assist the debtor when, among other things, a creditor inadvertently contacts the putative debtor *at the start* of his collection efforts.⁶ A single disclosure notice is required following the initial communication in connection with the collection of a debt determined as articulated above. However, a creditor must validate a disputed debt pursuant to 940 CMR 7.08(2) even if he has included proof of the debt within the initial communication.

Validation of Debt and the Automatic Stay Under 940 CMR 7.08(2)

The automatic stay⁷ established by section 7.08(2) is in place until a creditor produces the documents necessary to validate a debt. This is not intended to limit the ability of creditors in mortgage transactions to contact delinquent borrowers about home preservation options or other loss mitigation programs that may benefit a borrower/debtor. For purposes of the Regulations, such contacts with a debtor are for servicing purposes in an effort to assist the consumer, and are not considered to be made in connection with collection of the debt.⁸

³ In other words, whether an unsophisticated but reasonable consumer would believe the creditor is communicating in connection with the collection of a debt. Certain creditors have ongoing contact with a debtor in connection with a revolving line of credit. This may include sending a periodic or monthly account statement, which is a description of the status of a debtor's account, but may also contain warning language that delinquent payment could trigger an obligation to pay the balance in full or a penalty. In general, for a single account associated with a revolving line of credit that fluctuates between current and in arrears, a single disclosure made after initial communication in connection with collection of the debt is sufficient, provided there is no change in parties or terms and conditions to that account. Therefore, an account statement or similar communication in connection with subsequent arrearages on the same revolving account typically would not qualify as a communication made in connection with the collection of a debt.

⁴ For example, if the only relationship between the parties arises from their status as debtor and creditor, and ongoing future contact with the debtor is limited or nonexistent, that factor may be indicative of a communication made in connection with the collection of a debt in contrast to an installment sales or financing agreement where the creditor has an ongoing relationship with the borrower/debtor.

⁵ FTC Staff Commentary on the Fair Debt Collection Practices Act.

⁶ Similarly, failure to dispute a debt within the thirty-day period pursuant to 940 CMR 7.08(1)(c) will not be construed as an admission of liability by a debtor.

⁷ See 940 CMR 7.08(2). "If the debtor, or any attorney for the debtor, notifies the creditor in writing within the 30-day period described in subsection (1) of this section, that the debt, or any portion thereof, is disputed, *the creditor shall cease collection of the debt, or any disputed portion thereof, until the creditor verifies the debt and provides the debtor, or any attorney of the debtor, by first class mail, the following materials:*" (emphasis added).

⁸ Consistent with this approach, compliance with 940 CMR 7.08(2) does not exempt any person from complying with 209 CMR 56.00, the Right to Cure Regulations, or any other state or federal law or regulation in connection with foreclosure or loss mitigation treatment.

Documents Required Under 940 CMR 7.08(2)(a)

The Attorney General's Office expects that creditors will act in good faith and exercise due diligence to produce documentation sufficient to confirm that the amount demanded is due to the creditor from the debtor. The provision is in place to assist and protect the debtor who feels the collection efforts may be misplaced and the debt invalid. To that extent, if a creditor has certain documentation in its possession which serves to verify the identity of the consumer and the amount of the debt owed to the creditor, then those must be included in the materials provided to the debtor.⁹

⁹ This regulation does not necessarily require the production of every signature-bearing document with regard to the many individual transactions that may be associated with a revolving account or loan obligation, or the various documents specific to transactions that may be itemized in a statement verified by the creditor.