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GUIDANCE IN RESPONSE TO FREQUENTLY ASKED QUESTIONS CONCERNING 940 CMR 35.00

On March 26, 2020, the Attorney General's Office ("AGO") issued regulations codified at 940 CMR 35.00 ("Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19") on an emergency basis (the "Emergency Regulations"). In order to provide clarity with regard to frequently asked questions concerning the Emergency Regulations, and to assist in the implementation of the Emergency Regulations, the AGO issues the following guidance.

Please note that the Supreme Judicial Court, in its order dated April 1, 2020, tolled all statutes of limitation in Massachusetts from March 17, 2020 until May 3, 2020. The SJC also extended all deadlines set forth in statutes, court rules, standing orders, or guidelines that would have expired on or after March 16, 2020 until May 4, 2020. The AGO will continue to monitor any further orders of the Massachusetts court system and its constituent departments, and will continue to evaluate the status of 940 CMR 35.00 in light of those orders.

Effective Date

Question: What is the effective date of the Emergency Regulations?

Answer: The Emergency Regulations became effective upon filing on March 26, 2020.

Attachments of Wages and Property and Repossessions

Question: If a creditor or debt collector has obtained and served an order of attachment for a debtor's wages or property before March 26, 2020, does a creditor's or a debt collector's continued acceptance of payments pursuant to such an order violate the Emergency Regulations?

Answer: No. 940 CMR 35.03(1)(b) prohibits a creditor or debt collector from commencing any new action to attach wages or property of a debtor or serving an order of attachment for wages or property on a third-party trustee during the State of Emergency Period. If a creditor or debt collector obtained and served an order of attachment before March 26, 2020, and is receiving payments pursuant to that order, the acceptance of those payments does not violate the Emergency Regulations.

Question: Where a creditor or a debt collector has obtained and served an order of attachment of a debtor's wages before March 26, 2020, do the Emergency Regulations prohibit a creditor or a debt collector from reducing the amount of a debtor's wages attached for a debt or halting attachment altogether?

Answer: No. If a creditor or a debt collector reduces the amount of wages or earnings being attached for a debt, whether in response to a debtor’s request or otherwise, such conduct does not violate 940 CMR 35.03(1)(b).

Question: Do the Emergency Regulations prohibit a trustee, such as an employer or a financial institution, from complying with an order of attachment?

Answer: No. A third-party trustee who is served with a court order of attachment to surrender money belonging to a debtor in settlement of a debt or claim, and who is not a “creditor” with respect to the debt or debtor at issue, is not regulated by 940 CMR 35.03(1)(b).

Question: Do the Emergency Regulations require creditors to halt all activity relative to the repossession of a vehicle?

Answer: Yes. Under 940 CMR 35.03(1)(c), a creditor may not initiate, threaten to initiate or act upon the repossession of a vehicle. Calls, emails or letters stating an intention to repossess a vehicle would likely constitute a “[threat] to initiate or act upon any legal or equitable remedy for the repossession of any vehicle” in violation of 940 CMR 35.03(1)(c).

Definition of Debt Collector

Question: Does an agency that collects on behalf of a “first-party” or “original” creditor, i.e., a person or business who offers or extends credit creating a debt, qualify as a “debt collector” under the Emergency Regulations?

Answer: Yes. If a business is collecting on behalf of a first-party or original creditor, that business would qualify as a “debt collector” as defined by 940 CMR 35.02 by engaging in the collection of a debt owed to another.

Question: Does a person or business collecting a debt on behalf of a debt buyer qualify as a “debt collector” under the Emergency Regulations?

Answer: Yes. A person or business who engages in collection on behalf of a debt buyer, including any employee, independent contractor, subsidiary or affiliate of a debt buyer, qualifies as a “debt collector” under 940 CMR 35.02.

Communications by Debt Collectors And Creditors

Question: Do the Emergency Regulations prohibit a creditor or a debt collector from answering inbound calls initiated by a consumer?

Answer: No. 940 CMR 35.04(1) prohibits a debt collector from “initiat[ing] a communication with any debtor via telephone” but does not prohibit answering a call that the consumer initiates. If a consumer calls a debt collector, the debt collector may speak with the consumer.

Question: Do the Emergency Regulations prohibit a creditor or a debt collector from returning a telephone call initiated by a consumer?

Answer: No. 940 CMR 35.04(1) does not prohibit a debt collector from “respon[ding] to a request made by [a] debtor for ... communication.”

Question: Do the Emergency Regulations prohibit communication between a creditor or a debt collector and a debtor when both parties are physically present in a courthouse in connection with judicial proceedings regarding a debt?

Answer: No. Communicating with a debtor while physically present in a courthouse in connection with judicial proceedings regarding a debt does not constitute “confront[ing] or communicat[ing] in person with a debtor regarding the collection of a debt in [a] public place” under 940 CMR 35.03(g).

Question: Do the Emergency Regulations prohibit a creditor or a debt collector from sending a debtor text messages or emails?

Answer: No. The Emergency Regulations do not restrict the use of text messages and email. All forms of communication with a debtor must still comply with all applicable laws, including the requirements of the Attorney General’s Debt Collection Regulations, 940 CMR 7.00, which, among other things, limit the frequency of text messages to no more than two in any seven-day period.

Credit Unions

Question: Is a credit union a “debt collector” for the purposes of the Emergency Regulations?

Answer: No. Credit unions are “creditors,” but not “debt collectors” as defined in 940 CMR 35.02, unless in the course of collecting on debts the credit union “uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt.”

Question: Do the Emergency Regulations prohibit a credit union from making debt collections calls, or from sending debt collection letters and emails?

Answer: No. Creditors who are not debt collectors may make collection calls, subject to the provisions of 940 CMR 7.00. Both creditors and debt collectors may send debt collection letters and emails, so long as they do not engage in any of the conduct prohibited by 940 CMR 35.03(1)(a) through (g) or other applicable law.

Non-Consumer Debts

Question: Do the Emergency Regulations govern collections of commercial debts?

Answer: No. The Emergency Regulations govern only the collection of debts incurred “for personal, family or household purposes.” 940 CMR 35.02 (incorporating the definition of “debt” set forth in 940 CMR 7.03). The Emergency Regulations therefore do not apply to the collection of debts incurred for business or commercial purposes.

Question: Do the Emergency Regulations apply to a consumer who has obtained a legal judgment against a business and is seeking to enforce it?

Answer: No. A judgment against a business is not a “debt” as defined by 940 CMR 35.02.

Dated: April 3, 2020