



January 28, 2013

## MASSACHUSETTS ATTORNEY GENERAL PROVIDES GUIDANCE ON DEBT COLLECTION REGULATIONS

The Massachusetts Attorney General has issued guidance on the Debt Collection Regulations that it amended last year effective March 2, 2012. As reported in our *ALERT* dated April 30, 2012, the Attorney General: (i) amended a number of definitions under the Regulations, including the definitions of "communication or communicating," "creditor" and "debt"; (ii) added a definition for "time-barred debt"; (iii) created a new validation requirement that is somewhat similar to but distinct from the validation requirement under the federal FDCPA; (iv) added text messaging, recorded audio messaging and cell phones to call frequency restrictions; (v) added text messaging, download fees, data usage fees and other similar charges to causing expense restrictions; and (vi) added restrictions on collecting time-barred debts.

### Initiating a Communication

The guidance provides that the restriction in Section 7.04(1) of the Regulations on initiating 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 does not apply to unsuccessful attempts by a creditor to reach a debtor that do not result in a left message.

### Secured Creditors

The guidance provides that secured creditors are not precluded from enforcing their rights against collateral in accordance with valid enforceable mortgages or other valid enforceable security agreements despite the prohibitions in Sections 7.07(18)(d) and (19).

### Creditor's Validation Obligations

The guidance addresses certain issues with respect to complying with the new validation requirement in Section 7.08(1). According to the Attorney General, whether a creditor has made a communication with a debtor in connection with the "collection of a debt" that would trigger the validation requirement will depend on certain factors, including:

- Whether the communication demands payment or otherwise attempts to collect the debt (as determined from the perspective of an unsophisticated but reasonable consumer);

- Whether the communication is an attempt to induce the debtor to settle or discuss the debt; and
- The relationship of the parties.

For a single account associated with a revolving line of credit that fluctuates between current and in arrears, the guidance provides that 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 the account. However, a creditor must validate a disputed debt as required by Section 7.08(2) even if the creditor has included proof of the debt within the creditor's initial communication.

The Attorney General also stated that the automatic stay established by Section 7.08(2) is in place until the creditor produces the documents necessary to validate the debt. The stay, however, 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 benefit the debtor.

Finally, the guidance provides that the Attorney General expects creditors to act in good faith and exercise due diligence when producing documentation sufficient to confirm that the amount demanded is due to the creditor from the debtor. Consequently, the creditor must provide to the debtor certain documentation in the creditor's possession that serves to verify the identity of the consumer and the amount of the debt owed to the creditor. A creditor, however, is not necessarily required to produce every signature-bearing document with regard to 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. □

✧ *Margaret Stolar and Charles Gall*

## CHICAGO TO LICENSE AND REGULATE DEBT COLLECTORS

On January 17, 2013, the Chicago City Council amended its Municipal Code to require debt collectors to obtain a regulated business license. It also added a new section to the Code governing debt collection. The new section defines "consumer debt," "debt collection," "debt collector" and "debtor." Specifically, a "debt collector" is defined as any person who in the ordinary course of

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business, on behalf of himself or others, regularly engages in consumer debt collection, but does not include persons exempt from registration as a debt collector pursuant to Section 2.03 of the Illinois Collection Agency Act.

In addition to licensing, debt collectors must:

- Comply with all applicable state and federal laws regulating the collection of consumer debt, including the federal Fair Debt Collection Practices Act and the Illinois Collection Agency Act and Consumer Fraud and Deceptive Practices Act.
- Comply with a validation requirement that is similar to the validation requirement under the federal FDCPA but that (i) expressly requires a debt collector to provide a statement notifying the debtor of any validation disclosures that are included on the back of a notice and (ii) specifies the type of information that must be provided to verify a consumer debt.
- Maintain a separate file, either in electronic or paper format, of certain information, including (i) written communications with the debtor, (ii) payments received from the debtor, (iii) the consumer debt payment schedule or settlement agreement and (iv) with respect to purchased debts, the name and address of the entity from which the debt collector purchased the debt.

The new section also provides that no person whose debt collector license is revoked for any cause may be granted a license for four years. Penalties include fines of not less than \$250 nor more than \$2,500 for a first offense.

The amendments to the Code will become effective July 1, 2013. □

✧ *Margaret Stolar and Charles Gall*