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MASSACHUSETTS PROHIBITS CERTAIN DEBT COLLECTION PRACTICES DURING COVID-19 CRISIS

The Massachusetts Attorney General has issued regulations on an emergency basis to prohibit certain collection conduct by creditors and debt collectors. The regulations become effective immediately. The emergency regulations will expire on the earlier of (i) 90 days following the effective date of the regulations or (ii) 30 days following the lift of the state of emergency declared by the Massachusetts Governor.

The emergency regulations supplement the Massachusetts debt collection regulations, 940 Code Mass. Regs. 7.00 *et seq.* The emergency regulations provide that it is an unfair or deceptive act or practice for any debt collector to initiate a communication via telephone, in person or by recorded message, to the debtor's residence, cell phone or any personal telephone number provided to the debt collector. The following communications by debt collectors are not prohibited by the regulations: (i) calls in response to a request by a debtor for the communication and (ii) communication initiated solely for the purpose of informing a debtor of a rescheduled court appearance date or to discuss a new date for a rescheduled court appearance.

Under the regulations, it is also an unfair or deceptive act or practice for any creditor, including a debt collector, to:

- Visit or threaten to visit the household of a debtor at any time;
- Visit or threaten to visit the place of employment of a debtor at any time;
- Confront or communicate in person with a debtor regarding the collection of a debt in any public place at any time;
- Initiate, file or threaten to file any new collection lawsuit;
- Initiate or threaten to initiate, or act upon any remedy for garnishment, seizure, attachment or withholding of wages, earnings, property or funds for the payment of a debt to a creditor;
- Initiate, threaten to initiate or act upon any remedy for repossession of any vehicle; or
- Apply for, cause to be served, enforce or threaten to apply for, caused to be served or enforce any *capias* warrant.

The regulations do not prohibit a telephone, gas and electric utility

company from visiting or threatening to visit a debtor's household.

Neither set of UDAP provisions apply to attempts to collect a debt arising from a loan secured by a mortgage on real property or a debt owed by a tenant to an owner. The regulations do not exempt any person from comply with existing laws regarding debt collection.

The emergency regulations contain a specific definition of "debt collector," which somewhat tracks the definition of "debt collector" under the federal Fair Debt Collection Practices Act. The regulations refer to the definitions of "creditor" and "debt" in the Massachusetts debt collection regulations cited above.

We are not aware of any other state that has issued an emergency regulation prohibiting certain general collection practices. Federal and state regulators have issued guidance to financial services providers and asked for collections to be curbed. We recommend careful evaluation of any collection efforts during the COVID-19 crisis. □

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