



## COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

### DIVISION OF INSURANCE

One Federal Street, Suite 700 • Boston, MA 02110

(617) 521-7794 • (877) 563-4467 • [www.mass.gov/doi](http://www.mass.gov/doi)

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LIEUTENANT GOVERNOR

### Filing Guidance Notice 2025-T

**To:** Insurers Authorized to Write Personal Lines Property and Liability Insurance in Massachusetts

**From:** Jackie Horigan, Deputy Commissioner, Product Regulation and Innovation

**CC:** Michael T. Caljouw, Commissioner; Sheri Cullen, Director, Policy Form Review; Matthew Mancini, Director, State Rating Bureau

**Date:** October 31, 2025

**Re:** 940 CMR 38.00 – Unfair and Deceptive Fees

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The Division of Insurance is issuing this filing guidance for the submission of new disclosures forms related to 940 CMR 38.00 – Unfair and Deceptive Fees, commonly known as “junk fees”.

#### **Regulatory Change**

940 CMR 38.00 – Unfair and Deceptive Fees (the “Regulation”) was promulgated by the Massachusetts Attorney General in March of 2025 and is effective as of September 2, 2025. Among other things the Regulation establishes standards, by defining certain unfair and deceptive acts and practices, governing contracts with Negative Option Features. Pursuant to Guidance issued by the Attorney General’s Office on July 29, 2025, products insuring property or liability are covered by 940 CMR 38.00 and must meet all of the Regulation’s requirements.

The Regulation defines a “Negative Option Feature” as (a) provision of a contract under which the consumer’s silence or failure to take affirmative action to reject a good or service or to cancel or non-renew an agreement is interpreted by the seller as acceptance or continuing acceptance of the offer, including, but not limited to:

(1) an automatic renewal;

(2) a continuity plan;

(3) a free-to-pay conversion or fee-to-pay conversion; or

(4) a pre-notification negative option plan.

The Regulation states further that for any Negative Option Feature exceeding thirty-one (31) days, it shall constitute an unfair and deceptive practice under G.L. c. 93A, § 2 to not provide the consumer written notice within no more than thirty (30) and no fewer than five (5) calendar days prior to the date upon which the consumer must cancel in order to avoid incurring a subsequent financial obligation, which discloses Clearly and Conspicuously:

(a) any financial obligations that may be incurred if the consumer fails to cancel the Negative Option Feature;

(b) all Products for which the consumer may incur a financial obligation if the consumer fails to cancel the Negative Option Feature;

(c) the mechanism by which the consumer may cancel the Negative Option Feature, which shall comply with the requirements of 940 CMR 38.05(3);

(d) the calendar date by which the consumer must cancel the Negative Option Feature in order to avoid incurring a financial obligation; and

(e) the calendar date on which the consumer will incur any financial obligation if the consumer fails to cancel the Negative Option Feature.

In addition, pursuant to the Regulation, where a Negative Option Feature exceeds thirty-one (31) days, failure to provide the written policyholder notice required under section 940 CMR 38.05(4) through a medium substantially similar to that used by the consumer to initiate the Negative Option Feature, or through a commonly-used medium that is reasonably calculated to be seen and understood by an ordinary consumer, and that is affirmatively chosen by the consumer to be their preferred method of contact shall also constitute an unfair and deceptive practice under G.L. c. 93A, § 2. Where the consumer initiated the Negative Option Feature through an in-person transaction, the written policyholder notice required under section 940 CMR 38.05(4) must be provided through a commonly-used medium that is reasonably calculated to be seen and understood by an ordinary consumer, and that is affirmatively chosen by the consumer to be their preferred method of contact.

### **Filing of Required Forms**

Effective for all policies issued or renewing on or after March 2, 2026, that contain Negative Option Features as defined by the Regulation, carriers are to submit for the Division's review a copy of the application for insurance and a separate policyholder notice to address the disclosure requirements for Negative Option Features contained in 940 CMR 38.00. The policyholder notice and application shall be consistent with the standards outlined in G.L. c. 175, §2B, however, the Division intends to waive the requirement that the text achieves a minimum Flesch scale readability score of fifty. Carriers should make all efforts to reach a readability score as close to fifty as possible.

Consistent with G.L c.175, §192, the approval of forms by the Commissioner shall also apply to all forms of riders, endorsements and applications designed to be attached to such policy forms. In order to comply with the requirements set forth in 940 CMR 38.00, carriers will be required to submit applications not attached to the policy for review. The application must include language for the consumer to review prior to the purchase and acceptance of the insurance policy. Such language should highlight that the policy contains a Negative Option Feature and include instructions on how to cancel the Negative Option Feature consistent with this Filing Guidance.

The policyholder notice shall provide the following information to policyholders:

- (a) any financial obligations that may be incurred if the consumer fails to cancel their insurance policy;
- (b) all policies or products for which the consumer may incur a financial obligation if the consumer fails to cancel their insurance policy;
- (c) the mechanism by which the consumer may cancel their insurance policy, which shall comply with the requirements of 940 CMR 38.05(3);
- (d) the calendar date by which the consumer must cancel their insurance policy in order to avoid incurring a financial obligation; and
- (e) the calendar date on which the consumer will incur any financial obligation if the consumer fails to cancel their insurance policy.

For purposes of submitting filings, carriers are reminded to review FGN 2019-B as interline filings may provide a more streamlined and efficient filing process. For purposes of policy renewal the disclosure must be provided to the policyholder no more than thirty (30) and no fewer than five (5) calendar days prior to renewal as set forth in the Regulation and should/shall include language to highlight that the policy will be automatically renewed if not cancelled by the policyholder prior to the renewal date. It is the recommendation of the Division that this disclosure is sent as early as permitted under the Regulation.

The Division expects all filings, which are to include both the application and disclosure, to be submitted by November 28, 2025, via the System for Electronic Rates and Forms Filings (SERFF). Filings made specifically in response to Filing Guidance Notice 2025-T should not be submitted with other form/rule/rate changes and should include a Filing Description field beginning with the phrase “IN RESPONSE TO: Filing Guidance Notice 2025-T.”

For illustrative purposes only, a disclosure similar to the following language would be acceptable:

### **Important Notice**

In accordance with 940 CMR 38, we are providing the following disclosure notice regarding your insurance policy.

Your policy contains a Negative Option Feature as defined by 940 CMR 38.00 – Unfair and Deceptive Fees. Your policy will renew on [DATE] and you will be expected to make regular premium payments thereafter. If you do not cancel your form of payment for your insurance policy by [DATE], these charges will automatically begin on [DATE]. If you did not receive a non-renewal notice from us, then we intend to renew your policy.

To cancel your payment, please contact your agent, call us at [NUMBER] or submit a request to cancel your policy online. Failure to cancel by the stated deadline will result in financial obligations for each listed policy. Not paying your premium by another means will result in the cancellation of this policy.

You always have a right to cancel or non-renew your existing coverage, even if we intend to renew your policy. Cancelling or non-renewing your insurance policy without securing alternate coverage may result in a lapse of protection, leaving you financially exposed in the event of a loss. Please ensure that you have obtained coverage with another insurance company should you cancel or non-renew your policy.

## **Implementation**

As noted, all filings are expected to be submitted and reviewed in advance of March 2, 2026. If filings are submitted by November 28, 2025, the Division will take steps for filings to be placed on file by February 1, 2026 so that carriers may send required notices at policy renewals and that policies renewed on and after March 2, 2026 can be compliant with the Regulation's provisions. Any questions about this Filing Guidance Notice may be directed to Sheri Cullen, Director of Policy Form Review at (617) 521-7359 or to [Sheri.Cullen@mass.gov](mailto:Sheri.Cullen@mass.gov)