

OFFICE OF THE ATTORNEY GENERAL
GUIDANCE WITH RESPECT TO UNFAIR AND DECEPTIVE FEES (940 CMR 38.00)

The Office of the Attorney General has issued regulations concerning unfair or deceptive fees in the purchase, lease, or rental of products by Massachusetts consumers. The regulations will take effect on September 2, 2025. The Office of the Attorney General issues this guidance to facilitate compliance with the regulations and answer expected questions from the public.

38.01: Purpose; 38.02: Scope

Are any industries not covered by these regulations?

The Office of the Attorney General has determined that 940 CMR 38.00 does not apply to air transportation provided by air carriers, as those terms are used in 49 U.S.C. § 41713.

Additionally, as specified in the regulations, 940 CMR 38.06, compliance with specific statutes or regulations shall constitute compliance with all or part of these regulations.

These exemptions should not be interpreted to mean that G. L. c. 93A, or the Attorney General's regulatory authority, does not apply to these types of businesses or transactions. Instead, the Attorney General, as a matter of regulatory discretion, has determined not to apply the aforementioned regulatory provisions to these entities as part of this regulatory promulgation, without waiving any authority or right to promulgate future regulations to cover such conduct.

38.03: Definitions

What constitutes "charges imposed on consumers by a quasi-governmental entity operating pursuant to state statute" under the definition of "Government Charges"?

The Office of the Attorney General anticipates that some sellers may pass on a surcharge to consumers through a Tourism Destination Marketing District (TDMD) as established by Section 14 of Chapter 29 of the Acts of 2021. These surcharges are defined as "Government Charges" by 940 CMR 38.00 and therefore are exempt from the other requirements for disclosing the "Total Price." Sellers that do levy a surcharge through a TDMD must still disclose the fee to consumers in the final presentation of the price prior to Sale, as they would state, local, or federal taxes.

38.04: Unfairness and Deception in Connection with Marketing/Solicitation/Sale

In the final presentation of the price to the consumer prior to sale, do these regulations dictate the form in which Government Charges must be disclosed?

Sellers are not required to display the "Government Charges" associated with the purchase of each individual Product in a Sale of multiple Products. A seller may display the total amount to be paid for each category of "Government Charges" applicable to the Sale across all Products included in one transaction at the final presentation of the price prior to Sale.

Where these regulations require the disclosure of the "nature, purpose, and amount" of fees and charges, how much detail are sellers required to show?

The nature or purpose of any fee or charge, as disclosed to the consumer, must accurately reflect the purpose for which the seller uses the money collected from such fee or charge. Many fees could be disclosed using a concise phrase, such as a "cleaning fee," provided the amount charged is reasonably reflective of the cost the seller incurs for cleaning. There may be instances where an ordinary consumer would require more information to understand the nature and purpose of a fee. Sellers may use concise language combined with commercially reasonable and accessible means to provide additional information that Clearly and Conspicuously discloses the nature and purpose of such fees for the benefit of consumers. Commercially reasonable means may, for example, include information buttons or links in electronically presented Advertisements, marketing materials, solicitations, or offers of Sale.

Where these regulations require the disclosure of readily available instructions for avoiding optional or waivable fees, how may sellers present this information?

Sellers may use commercially reasonable and accessible means to provide instructions for how consumers may avoid such fees, provided such information is readily available. Commercially reasonable means may, for example, include information buttons or links in electronically presented Advertisements, marketing materials, solicitations, or offers of Sale.

What must be included in an Advertisement of a rental listing, like an apartment for rent?

The regulations provide that a seller advertising a rental listing for a dwelling unit may, at the time of the initial presentation of the price of the dwelling unit, Advertise the Total Price as an amount that the seller intends for the tenant to pay on a monthly basis. For example, a landlord who is seeking a tenant for a yearly lease with the rent paid in monthly installments need not Advertise the total amount to be paid by prospective tenants over the course of the entire lease in the

initial presentation of the price. To comply with 940 CMR 38.04(1), it is sufficient for landlords or their agents to Advertise the Total Price, inclusive of all fees, to be paid monthly by the tenant in such initial presentation of the price.

38.05: Recurring Fees & Trial Offers

For telephone cancellations, how must a seller comply with 940 CMR 38.05(3) if they do not have someone available to answer the phone during regular business hours?

Sellers that allow consumers to sign up for a Product with a recurring charge via telephone must allow consumers to cancel via telephone. However, a seller will not automatically be in violation of the regulations if the consumer calls to cancel and a person is unavailable to take the call, provided that the seller either employs an automated system that allows consumers to effectuate cancellation or includes an adequate voicemail system. An adequate voicemail system will identify the information a consumer must provide in a voicemail left with the seller to effect cancellation. Where the consumer leaves a voicemail indicating an interest in cancellation, but does not provide complete information, sellers should return calls promptly allowing a consumer to effect cancellation before a recurring charge occurs.

How is the duration of a Negative Option Feature determined?

For the purposes of determining whether a Negative Option Feature exceeds 31 days, these regulations consider the time interval between acceptance of a negative option feature and the date upon which a consumer must cancel to avoid incurring a new or additional charge.