

August 21, 2015

Commissioner David Cotney
Commonwealth of Massachusetts
Division of Banks
1000 Washington St, 10th floor
Boston, Ma 02118

RE: 209 CMR 18.000-22.00, Conduct of the Business of Debt Collectors and Loan Servicers

Dear Commissioner Cotney:

Our office is pleased to submit commentary for consideration by the Commonwealth's Division of Banks ("DOB") relative to the above referenced regulations of your Agency. We are submitting these comments in furtherance of the directive contained in Executive Order No. 562 issued by Governor Charlie Baker ("Order") requesting that Agencies of the Commonwealth conduct a review of their regulations to "...relieve the Commonwealth from the burden of unnecessary regulation".

Although a portion of our law practice involves the representation of real estate mortgage lenders and servicers, the suggestions contained in this letter are those of our office alone and should not be construed as the opinions of or otherwise attributable to our clients. We have reviewed 209 CMR 18.00 et seq. (the "Regulations") in their entirety and the applicable body of Federal and state laws and regulations which also regulate these activities. The following are our suggestions:

209 CMR 18.01

The Regulations are one of several sets of regulations and laws which govern debt collection and mortgage servicing activities in Massachusetts. As a result, mortgage lender and servicers holding or servicing real estate mortgage loans must reconcile inconsistencies and overlapping compliance requirements contained in the Regulations, the provisions of M.G. L . Ch. 93A governing unfair and deceptive trade practices as well as the debt collection regulations of the MA Attorney General contained in 904 CMR 7.00 ET Seq ("AG Regulations"). Taken together these regulate every business or person who engages in collection of any debt in the Commonwealth regardless of whether they are otherwise under the supervision of a Federal Agency such as the FDIC, OCC, CFPB or FTC.

These compliance challenges are further compounded by the existing Federal laws and regulations that regulates these activities, specifically, the Fair Debt Collections Practice Act (“FDCPA”) and regulations of the Consumer Financial Protection Bureau (“CFPB”.) Reconciling this regulatory scheme can be particularly challenging for the smaller local lenders who must devote scarce resources to compliance regardless of the size of their loan portfolio.

While my analysis here is limited to the Regulations, I feel it is important that any review of the Regulations include a comprehensive analysis of the requirements under both state and federal laws and regulations to eliminate existing inconsistencies and burdensome requirements.

Recommendation: The DOB undertakes its regulatory review in concert with the Office of the Attorney General relative to the Regulations and the AG Regulations to eliminate provisions that are confusing, more burdensome or inconsistent with Federal law.

209 CMR 18.02

Third party loan servicers are broadly defined in the Regulations as any party servicing a loan for another. The effect of this is a local lender who is lending only within the Commonwealth but maybe servicing a handful of loans for another such as loans where Freddie Mac or Fannie Mae is the investor will be a third party servicer as to those few loans. Third party servicers must complete a complicated registration process with the DOB and pay a fee. We are unclear as to how this furthers the regulatory process. If the mortgage loan moves into default these same servicers must identify themselves as part of the loan registration process under 209 CMR 56.00 when commencing the foreclosure process.

Recommendation: Short of a repeal of the portion of the regulations governing third party servicing, which we support, we suggest there be a specific exemption created for local lenders chartered in the Commonwealth from compliance with 209 CMR 18.13-18.21A.

209 CMR 18.03

Holders of mortgage loans or those servicing for others may in a number of instances find themselves having to apply for, obtain and maintain multiple license under the Regulations, 209 CMR 20 and as a mortgage lender. Each has different licensing requirements and application processes.

Recommendation: Streamline and consolidate the licensing requirements such that multiple licenses are not required for secured lending or collection activities.

209 CMR 18.08

A regulated party must notify the DOB of the occurrence of events deemed significant within one business day of the occurrence of the event. Many regulated parties have multiple state practices and must manage all regulatory notification requirements. The parameters of some of the proscribed events under the Regulations requiring 24 hours' notice are not clearly defined or quantified. For example 24 hours' notice must be presumably be given for the smallest shortage such as 5 cents in a trust account or the closing of such account in the ordinary course of business, the filing of a purported class action law suit regardless of the merit of the claims, amount in controversy or lack of certification of the class and changes in net worth regardless of the duration of the same, etc.

Recommendation: Recalibrate the reportable events to mirror the level of risk associated to the consumer and the DOB. Once this process is completed, modify the reporting floors and the timeline for notification of the described events to reflect the severity of the event.

209 CMR 18.10

The Regulations establish standards for review of the business records of the regulated parties. The Regulations allow the DOB to require additional information or impose additional terms and conditions relative to this review at their discretion.

Recommendation: We suggest that these additional requirements be set forth with specificity and standards for their imposition such that a regulated party has an expectation as to what may be required as part of the review process. We feel this would increase efficiency and certainty in the process.

209 CMR 18.13 (6) and 18.14(1)(d)

Under the Regulations a regulated party may not cause the consumer to incur texting, data usage or other expenses on his cellular phone as a result of communication. We appreciate the recognition in the Regulations of the universal use of this technology. However it would be impossible for a regulated party to determine if the party is using a cellular phone unless he or she self-identifies. It would also be impossible to determine what if any the cost the consumer would incur as a result of these calls. We believe if the consumer has indicated their intentions by their use of this device or by providing the cellular telephone number, the regulated party should be entitled to consider this as their communication device of choice and should be free to use that means to communicate.

Recommendation: The regulations should be modified to allow a regulated party to rely on the fact that the consumer has provided a cellular phone number as their contact information and therefore the consumer has assumed the costs associated with that use.

209 CMR 18.14 (1)(d) and (e)

The regulated party is severely limited to the number of times it may “initiate” (emphasis added) communication with the consumer per week and per month. The term “initiate” is not defined and could discourage a lender from contacting the borrower as needed to complete a loan workout. Further the regulated party must send a series of notices to the consumer to the extent communication is directed to him at his place of employment. These requirements are burdensome and have no counterpart under the FDCPA.

Recommendation: We request the elimination of these requirements.

209 CMR 18.(3)

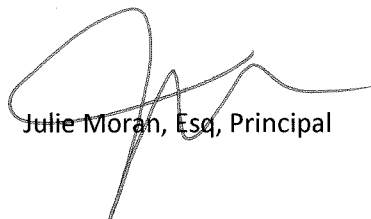
The Regulations add a requirement relative to the debt validation process which is not contained in the FDCPA and creates a significant regulatory burden for the lender. Subsection (3) requires the lender to provide a comprehensive loan payment history and all loan documents within 5 business days to the borrower. This requirement is without regard to whether the borrower requests this information or the nature of the dispute relative to the documents required to be provided.

Recommendation: We request the elimination of this subsection.

Thank you for the opportunity to provide these comments.

Sincerely

Orlans Moran PLLC



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