

940 CMR 3.00: GENERAL REGULATIONS

Section

- 3.01: Definitions
- 3.02: False Advertising
- 3.03: Deceptive Advertising of Guarantees
- 3.04: Deceptive Pricing
- 3.05: General Misrepresentations
- 3.06: Referral Schemes
- 3.07: Advertising or Offering to Sell on an "Easy Credit" Basis
- 3.08: Repairs and Services Including Warranties and Service Contracts
- 3.09: Door to Door Sales and Home Improvement Transactions
- (3.10): Private Home Study, Business, Technological Social Skills and Career Schools -- Correspondence and Other (repealed and replaced by 940 CMR 31.00: *For-profit and Occupational Schools*)
- 3.11: Private Employment Agencies and Business Schemes
- 3.12: Lay Away Plans
- 3.13: Pricing and Refund, Return and Cancellation Privileges
- 3.14: Subscription and Mail Orders
- 3.15: New for Used, Substitution of Products, Failure to Deliver
- 3.16: General
- 3.17: Landlord-Tenant
- 3.18: Price Gouging
- 3.19: Severability

940 CMR 3.00 is promulgated pursuant to M.G.L. c. 93A, § 2(c) for purposes of determining whether conduct, terminology or representations involve unfair methods of competition or unfair or deceptive acts or practices, in violation of M.G.L. c. 93A, § 2(a). 940 CMR 3.00 is not intended to be all inclusive as to the types of activities declared unlawful by M.G.L. c. 93A, § 2(a) but are intended to be of general application.

3.01: Definitions

As used in 940 CMR 3.00, the following words shall have the following meanings:

Act or practice. An act or practice shall include any threat or attempt to perform such act or practice.

Advertisement, Advertising, Advertise. Any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, public address system, or made in person, in direct mail literature or other printed material, or any interior or exterior sign or display, in any window display, in any point of transaction literature or price tag which is delivered or made available to a customer or prospective customer in any manner whatsoever.

Agency. Any governmental unit, including, but not limited to, any agency, court, board, department, or division, that is charged with enforcing any law.

Bait Advertising. "Bait Advertising" is an alluring but insincere offer to sell a product which the advertiser does not intend or want to sell. Its purpose is to switch consumers from buying the advertised product in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying a product of the type so advertised.

Books. For the purposes of these rules, the term "book" or "books" as herein used shall be construed as embracing all or any books, supplements, yearbooks, pamphlets, magazines, looseleaf material, and other printed material, sold, offered for sale or distributed, unless the context of the particular rule indicates or implies a contrary construction.

Buyer. "Buyer" includes a lessee or renter.

3.01: continued

Clear and Conspicuous Disclosure. Without limiting any other provisions of law, disclosures required by these regulations shall be of such size or color contrast and so placed as to be readily noticeable to purchasers or prospective purchasers reading advertising, sales promotional literature, or invoices containing same, or reading any representation as to content on the container in which the product is packed, or inspecting a product before installation or with a minimum of disassembly after installation. A term is conspicuous when it is so written that a person against whom it is to operate ought to have noticed it. Language in the body of a form is "conspicuous" if it is in larger or contrasting type or color.

Deceptive Warranty. For the purpose of this chapter a "deceptive warranty" is:

- (a) A guarantee or warranty that contains an affirmation, promise, description, or representation that is either false, fraudulent, or that, in the light of all the circumstances, would mislead the consuming public; or fails to contain the necessary information to avoid misleading the consuming public; or,
- (b) A guarantee or warranty created by the use of such terms as "guarantee" or "warranty" if the terms and conditions of such guarantee or warranty so limit its scope and application as to render the representation illusory, as where any costs or charges to the consumer attendant upon such work are prohibitive or approach the cost for the repairs absent any warranty or guarantee.

Door to Door Transaction. The sale, rental or lease of consumer goods or services with a purchase price of \$25 or more whether under single or multiple contracts in which the buyer's agreement or offer to purchase is induced at a place other than the place of business of the seller.

Dwelling Unit. Any building or structure, or any unit therein or part thereof, and all the common areas inside and outside such building or structure, occupied or intended for occupancy as a residence by one or more individuals; including a mobile home or a lot therefor.

Law. Law shall include, but not be limited to, any federal, state, or local statute, rule, regulation, code, ordinance or by-law.

Market Emergency. Any abnormal disruption of any market for petroleum products, including but not limited to any actual or threatened shortage in the supply of petroleum products or any actual or threatened increase in the price of petroleum products, resulting from severe weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, act of war, national or local emergency or other extraordinary adverse circumstances.

3.01: continued

Owner. Any person who holds title to one or more dwelling units in any manner including but not limited to a partnership, corporation or trust. For purposes of these regulations the term "owner" shall include one who manages, controls, and/or customarily accepts rent on behalf of the owner.

Person or Persons. The term "person" or "persons" as used in 940 CMR 3.00 includes an association, a corporation, an individual, an institution, a natural person, an organization, a partnership, and any other legal entity.

Petroleum Product. This term shall include, but shall not be limited to, motor fuels, as defined in M.G.L. c. 94, § 295A, and fuel oil used for heating or cooking purposes, as described in M.G.L. c. 94, § 303F.

Petroleum-related Business. Any producer, supplier, wholesaler, distributor or retail seller of any petroleum product.

Place of Business. The main or permanent branch office or fixed location for doing business of a seller. A booth at a fair or other temporary, stationary or mobile selling point does not constitute a place of business for the purposes of M.G.L. c. 93A.

Product. "Product" includes goods, whether tangible or intangible, real, personal, or mixed, services, or franchise or distribution systems of any nature whatsoever.

Repairs. To restore by replacing a part or putting together what is damaged or broken and shall include, but are not limited to, renovations or improvements of any sort to all or any part of a dwelling unit.

Sell. "Sell" includes lease, rent, or barter.

Supplies. All equipment, materials, or labor for repairs, decorations, renovations and improvements of any sort.

Rental Agreement. Any express or implied agreement for use and occupancy of a dwelling unit.

Tenancy. Occupation or use of a dwelling unit under a rental agreement.

Tenant. Any person who inhabits or is entitled to inhabit a dwelling unit under a rental agreement.

Warranty/Guarantee. The terms "warranty" or "guarantee" or any term connoting a warranty or guarantee as used in 940 CMR 3.00 are synonymous. The terms apply also to purported warranties and guarantees and to any promise or representation in the nature of a warranty or guarantee.

A warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. The serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. Goods to be merchantable must be at least such as pass without objection in the trade under the contract description; and in the case of tangible goods, are of fair average quality within the description; and are fit for the ordinary purposes for which such goods are used; and run within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and are adequately contained, packaged, and labeled as the agreement may require; and conform to the promises or affirmations of fact made on the container or label if any.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods shall be fit for such purpose.

3.01: continued

An express warranty or any statement in the nature of an express warranty or guarantee includes any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain. Any verbal or written representation, as well as any description of the goods, or sample or model of the goods which is made part of the basis of the bargain creates an express warranty. It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a guarantee.

3.02: False Advertising

(1) No advertisement containing an offer to sell a product shall be made when the offer is not a bona fide effort to sell the advertised product.

(2) No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.

Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception.

(3) No act or practice shall be engaged in by an advertiser or seller to discourage the purchase of the advertised product as part of a bait scheme to sell another product.

For example, among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:

- (a) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer.
- (b) The disparagement by acts or words of the advertised product or disparagement with respect to the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it.
- (c) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the product is available only at designated outlets.
- (d) The refusal to take orders for the advertised product to be delivered within a reasonable period of time.
- (e) The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement.
- (f) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product.

(4) No practice shall be pursued by an advertiser or seller in the event of sale of the advertised product of obtaining or attempting to obtain a rescission of the sale for the purpose of selling another product in its stead. Among acts or practices which are relevant in determining if the initial sale was in good faith, and not a stratagem to sell another product are:

- (a) Accepting a deposit for the advertised product, then switching the buyer to a higher-priced product.
- (b) Failure to make delivery of the advertised product within a reasonable time or to make a refund.
- (c) Disparagement by acts or words of the advertised product, or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it.
- (d) The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. Sales of the advertised product do not preclude the existence of a bait and switch scheme if the sales are a mere incidental by-product of the fundamental plan and are intended to provide an aura of legitimacy to the over-all operation.

3.03: Deceptive Advertising of Guarantees

In determining whether terminology and direct or implied representations concerning guarantees, however made, i.e., in advertising or otherwise, in connection with the sale or offering for sale of a product, may be in violation of M.G.L. c. 93A, § 2(a), the following general principles will be used:

- (1) In general, any guarantee in advertising shall clearly and conspicuously disclose:
 - (a) The nature and extent of the guarantee. This includes disclosure of:
 1. What product or part of the product is guaranteed.
 2. What characteristics of properties of the designated product or part thereof are covered by, or excluded from, the guarantee.
 3. What is the duration of the guarantee.
 4. What, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges; and
 - (b) The manner in which the guarantor will perform. This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement, refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out; and
 - (c) The identity of the guarantor. The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. For example, it should be made clear whether the manufacturer or the retailer is the guarantor.
- (2) As to those guarantees which are adjusted by the guarantor on a pro rata basis, the advertising relating thereto should clearly disclose this fact, the basis on which they will be pro rated, e.g., the time for which the guaranteed product has been used, and the manner in which the guarantor will perform.

If these guarantees are to be adjusted on the basis of a price other than that paid by the buyer, this price should be clearly and conspicuously disclosed.

Example: During the course of a sale, "A" sells to "B" for \$20 and with a 12 month guarantee a battery that he regularly sells for \$25. After 6 months the battery proves defective. If "A" adjusts on the basis of the price "B" paid, \$20, "B" will only have to pay ½ of \$20, or \$10, for a new battery. If "A" instead adjusts on the basis of the regular selling price, "B" will owe ½ of \$25, or \$12.50 for a new battery. The guarantor would be required to disclose here the following: that this was a 12 month guarantee, that the regular selling price, rather than the actual sale price, would be used in the adjustment, that there would be an adjustment on the basis of the time that the battery was used and, if factual, that he would not pay the adjustment amount in cash, but would make an adjustment on a new battery.

- (3) "Satisfaction or your money back," "10 day free trial," or similar representations will be construed as a guarantee that the full purchase price will be refunded promptly at the option of the buyer.

If such guarantee is subject to any conditions or limitations whatsoever, they shall be set forth as provided for in 940 CMR 3.03(2).

Example: A rose bush is advertised under the representation "Satisfaction or your money back." The guarantor requires return of the product within one year of purchase date before he will make refund. These limitations, i.e., "return" and "time" shall be clearly and conspicuously disclosed in the ad.

- (4) When a product is represented as "guaranteed for life" or as having a "lifetime guarantee," the meaning of the term "life" or "lifetime" should be explained.

Example: "A" advertised that his transmission was guaranteed for "life", whereas his guarantee ran for the "life of the car" in which the transmission was originally installed. The advertisement is ambiguous and deceptive and should be modified to disclose the "life" referred to.

3.03: continued

(5) Advertisements which contain representations of guarantees that assure prospective buyers that savings may be realized in the purchase of the advertiser's products, such as "Guaranteed to save you 50%", shall include a clear and conspicuous disclosure of what the guarantor will do if the savings are not realized, together with any time or other limitations that he may impose. Guarantees of this type may constitute affirmative representations of fact and, in this respect, are governed by 940 CMR 3.03(8).

(6) A seller or manufacturer shall not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

A specific example of refusal to perform obligations under the guarantee is use of "Satisfaction or your money back" when the guarantor cannot or does not intend promptly to make full refund upon request.

(7) Where guarantees are employed in such a manner as to constitute representations of material facts, the guarantor not only undertakes to perform under the terms of the guarantee, but also assumes responsibility under the law for the truth of the representations made.

Example 1: "Guaranteed for 36 months" applied to a battery is a representation that the battery can normally be expected to last for 36 months and should not be used in connection with a battery which can normally be expected to last for only 18 months.

Example 2: "Guaranteed to grow hair or money back" is a representation that the product will grow hair and should not be used when in fact such product is incapable of growing hair.

Example 3: "We guarantee you will earn \$500 a month" is a representation that prospective employees will earn a minimum of \$500 each month and should not be used unless such is the fact.

(8) The term "unconditionally guaranteed" should not be used when a guarantee is restricted in any manner other than as to time and when there is a time limit, it should be clearly disclosed (e.g., "unconditionally guaranteed for three years"). An "unconditional guarantee" is considered as an undertaking on the part of the guarantor either to refund the full purchase price of the product so guaranteed or to repair or replace such product should it prove defective in any respect, all at the option of the buyer.

(Note: The unqualified use of the word "guaranteed" shall be considered as a representation that an article so described is "unconditionally guaranteed".)

3.04: Deceptive Pricing

No claim or representation shall be made by any means which has the capacity or tendency or effect of deceiving buyers or prospective buyers as to the value or the past, present, common or usual price of a product, or as to any reduction in price of a product, or any saving relating to a product. Savings or value claims utilized in connection with terms such as "originally," "formerly," "regularly," "usually," "comparable value," "list price" or other like terms, expressions or representations must be based on facts provable by the claimant or advertiser.

(1) By his own records; or

(2) By reasonably substantial competitive sales in the trading area where such claims or representations are made, under circumstances and conditions as represented or implied by the claims or representations.

3.05: General Misrepresentations

(1) No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part thereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.

(2) No advertisement shall be used which would mislead or tend to mislead buyers or prospective buyers, through pictorial representations or in any other manner, as to the product being offered for sale. Where price is featured in advertising, any picture or depiction utilized in connection therewith, shall clearly indicate the exact product being offered for sale at the advertised price.

3.06: Referral Schemes

No plan or scheme of inducing purchases, or entering into obligations by representations and promises such as the following, or conditioned thereon, shall be used:

(1) That the seller would pay to each buyer certain money, credit or anything of value for each of any number or of a certain number of prospective buyers referred or recommended by each buyer, or for each such prospective customer so referred who becomes a buyer, and to whom the same representations and promises would be made, and

(2) That the buyers' purchases may thus be free or paid off in whole or in part by such money, credit, thing of value, and/or

(3) Concealing or disguising the obligation or contract involved or falsely representing that the plan does not involve any obligation or contract.

3.07: Advertising or Offering to Sell on an "Easy Credit" Basis

(1) It is an unfair or deceptive act or practice for any seller to induce a buyer or prospective buyer to enter into a transaction by advertising or offering to sell to such buyer on easy or lenient credit terms, or words to similar effect or meaning, when the facts demonstrate that the credit or repayment terms of the credit arrangement are neither lenient nor easy. Factors indicating that the credit terms are neither lenient nor easy are:

(a) The seller does not in fact extend credit to persons whose ability to pay, or credit rating, is below generally prevailing standards of credit worthiness;

(b) The down payment and repayment periods are not as low as or are shorter than those extended to persons ordinarily determined to be credit worthy;

(c) The true cost of the credit being charged by the seller is in excess of the average cost being charged by other sellers in the same general merchandise retail market;

(d) The mark-up over the seller's acquisition cost for the goods or services which are the subject of the transaction exceeds the average mark-up being charged for similar or comparable goods or services by sellers in the same general merchandise retail market;

(e) The seller pursues a policy of using rigorous collection practices against buyers who fall behind in their payments;

(f) The seller negotiates, sells, or discounts the instrument which is the evidence of the buyer's indebtedness to a third party without printing or stamping on the face "Consumer Note."

(2) A creditor in consumer loan transactions shall be subject to all of the defenses of the borrower arising from the consumer sale or lease for which the proceeds of the loan are used, if the creditor knowingly participated in or was directly connected with the consumer sale or lease transaction.

3.07: continued

Without limiting the scope of the preceding paragraph, a creditor shall be deemed to have knowingly participated in or to have been directly connected with a consumer sale or lease transaction if:

- (a) He was a person related to the seller or lessor;
- (b) The seller or lessor prepared documents used in connection with the loan;
- (c) The creditor supplied forms to the seller or lessor which were used by the consumer in obtaining the loan;
- (d) The creditor was specifically recommended by the seller or lessor to the borrower, and made two or more loans in any calendar year, the proceeds of which are used in transactions with the same seller or lessor; or
- (e) The creditor was the issuer of a credit card which may be used by the consumer in the sale or lease transaction as a result of a prior agreement between the issuer and the seller or lessor.

Any creditor who participates in a transaction which violates this rule, or knows or should have reason to know that a seller's practices may violate this rule, shall be deemed to be engaging in an unfair and deceptive trade practice. Any creditor who attempts to enforce a note, instrument, or other evidence of the buyer's indebtedness arising out of a transaction which violates this rule shall be deemed to be engaging in an unfair or deceptive trade practice.

3.08: Repairs and Services Including Warranties and Service Contracts

- (1) Repairs and Services. It shall be an unfair and deceptive act or practice to:
- (a) Fail to provide in advance to a customer upon request a written estimate of the cost to the customer of the anticipated repairs, or the basis upon which the charge to the customer will be made and the reasonably expected time to accomplish such repairs, including any charge for reassembly of any parts disassembled for inspection or any service charge to be imposed;
 - (b) Make or charge for repairs which have not been authorized by the customer;
 - (c) Fail to disclose, in the case of an in-home service call where the consumer has initially contacted the repairman, that a service charge will be imposed even though no repairs are effected, before the repairman goes to the consumer's home;
 - (d) Represent that repairs are indicated to be necessary when such is not a fact;
 - (e) Represent that repairs have been made when such is not a fact;
 - (f) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the customer's continued use of them may be harmful to him when such is not a fact;
 - (g) Materially understate or misstate the estimated cost of repair services.
 - (h) Fail to provide the customer with an itemized list of repairs performed and the reason for such repairs including:
 1. A list of parts and statement of whether they are new, used, or rebuilt and the cost thereof to the customer; and
 2. The number of hours of labor charged and the name of the mechanic performing the service; provided, however, that the requirements of 940 CMR 3.08(1)(h) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis.

- (2) Warranties. It shall be an unfair and deceptive act or practice to fail to perform or fulfill any promises or obligations arising under a warranty. The utilization of a deceptive warranty is unlawful.

Language intended to limit or modify the warrantor's obligations under a warranty shall not operate to limit the warrantor's liability, notwithstanding the limiting language, if the warrantor fails to perform under the warranty, provided, however, that no language of limitation otherwise unenforceable by statute or regulation shall be enforceable. This regulation in no way limits, modified, or supersedes any other statutory or regulatory provisions dealing with warranties.

3.08: continued

(3) Service Contracts. It shall be an unfair and deceptive trade practice to fail to disclose in writing, fully and conspicuously, in simple and readily understandable language that a service contract charge will be imposed if the consumer wishes to insure that repairs will be made to a purchased product so that it will operate properly. It shall also be an unfair and deceptive trade practice to fail to disclose in writing, fully, clearly, and conspicuously, in simple and readily understandable language that a consumer is paying a lower price for goods or services in exchange for a waiver of his warranty rights.

3.09: Door to Door Sales and Home Improvement Transactions

In connection with any door to door sale or home improvement transaction, it constitutes an unfair or deceptive act or practice for any seller to:

(1) At the time of initial contact, and before making any statement or asking any questions, use any misrepresentation, or fail to state any material fact which has the capacity or tendency to disguise, hide, or fail to inform the purchaser of the purpose of the contact;

(2) Make any representation, in the sale, offering for sale, advertising, or distributing for sale, or in any other manner, including the failure to adequately disclose additional relevant information, which has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to any material aspect of the product or transaction or any service to be performed in conjunction with the purchase of the product or service which the seller is advertising, selling, offering for sale or distributing for sale;

(3) Represent that the purchaser's or prospective purchaser's home or other property, real or personal, is to be used as a so called "model home" or "model property" for demonstration or advertising purposes or offer to give a rebate or discount or otherwise pay or to make any other similar representations, if in connection therewith the seller misleads the purchaser or prospective purchaser into the belief that he will be paid a commission or other compensation, either before or after the purchaser or prospective purchaser has paid in full for the seller's work, for any sale which the seller may make in the vicinity or within any specified distance from the purchaser's home, or that the cost of the purchase of any product to the purchaser will thereby be reduced or fully paid, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the purchaser enters into the agreement.

(4) Fail to disclose the exact nature, description and price of the goods or services which are to be the subject of the transaction to the purchaser or prospective purchaser in advance of any attempt to induce the purchaser or prospective purchaser to enter into

- (a) an agreement in writing, or
- (b) to pay any consideration to the seller;

(5) Fail to disclose that goods being offered need additional attachments or fixtures to perform the functions claimed for them by the seller;

(6) Induce or persuade a purchaser or a prospective purchaser to sign any writing when the seller knows or has reason to know that the purchaser or prospective purchaser is unable to read or write, or does not understand the terms of the instrument;

(7) Represent that the purchaser or prospective purchaser has been specially selected to receive a bargain, discount or other advantage when such in fact is not true;

(8) Represent that the purchaser or prospective purchaser is a winner of a contest; or that gift merchandise will be given to persons complying with certain conditions unless such merchandise is given to the persons complying with such conditions;

3.09: continued

(9) Include in any door to door sales contract or home improvement contract any confession of judgment or waivers of any of the rights to which a purchaser is entitled by any statute or regulation;

(10) Fail to disclose to a purchaser or prospective purchaser orally prior to the time of sale, and in writing on any conditional sales contract, promissory note, or other instrument of indebtedness executed by a purchaser or prospective purchaser, and with such conspicuousness and clarity as is likely to be observed and read by such a purchaser or prospective purchaser, that such instrument, which must have printed on the face thereof "Consumer Note", may be discounted, negotiated, or assigned to a finance company or other third party;

(11) Fail to conform to the requirements of M.G.L. c. 93, § 48 or M.G.L. c. 255D, § 14 or to misrepresent in any manner, the purchaser's or prospective purchaser's right to cancel created under such laws;

(12) Represent that the goods which are being offered are repossessed or the like or are being sold to satisfy the unpaid indebtedness of another person which such in fact is not true;

(13) Represent that the goods that are being offered are current models, when in fact they are not current models, or are discontinued models.

(3.10: Private Home Study, Business, Technological Social Skills and Career Schools -- Correspondence and Other (repealed and replaced by 940 CMR 31.00: *For-profit and Occupational Schools*)

3.11: Private Employment Agencies and Business Schemes

(1) The making of false or deceptive representations through advertisements or otherwise, regarding the actual or probable earnings or the existence of opportunities or openings in any vocation, company, business, firm or other place of employment is an unfair and deceptive trade practice.

(2) It is an unfair and deceptive trade practice to make any representations as to opportunities available in, or to promote any activity, occupation, or vocation as being profitable for one engaging in it if in fact the representations as to the opportunities available or profits to be made are untrue.

3.11: continued

(3) It is an unfair and deceptive practice in the sale or offering for sale of consumer goods or services for any person, to represent or imply in advertising or otherwise that persons employed in a particular position in a trade or industry or who are self-employed earn a stated salary or income or that the goods or services offered or sold will enable the purchaser or prospective purchaser to earn the stated salary or income or "up to" the stated salary or income unless:

(a) The salary or income is equal to or less than the average salary or income of persons employed less than five years in the indicated position in the Commonwealth, and the advertisement or representation states the basis for calculation of the average salary or income; or the advertisement or representation states the basis for calculation of the salary stated and also discloses the average salary or income of persons employed less than five years in the indicated position in the Commonwealth; and

(b) The advertisement or representation states any limitations, conditions, or other requirements such as union membership or service of an apprenticeship, which must be met before the stated salary or income can be earned; and

(c) The advertisement or representation states clearly and conspicuously that no guarantee is made that a person who purchases the advertised goods or services will earn the stated salary or income, unless the guarantee is actually offered by the seller.

The words "EARN \$..." or "EARN UP TO \$..." or words of similar import or meaning constitute a representation that a person who purchases the goods or services will earn the stated salary or income within the meaning of 940 CMR 3.11.

3.12: Lay Away Plans

It is unfair and deceptive acts or practice:

(1) To fail to disclose or to misrepresent in any way the store's policy with reference to a "lay away" plan;

(2) To represent to a buyer who is purchasing on a "lay away" plan that the specific goods chosen by the buyer or an exact duplicate of such goods are being laid away for that buyer when such is not a fact;

(3) To fail to disclose to the buyer that the specified goods or their exact duplicate will only be set aside for a certain period of time;

(4) To deliver to the buyer after payments (pursuant to the lay away plan) are completed, goods which are not identical or exact substitutes to those specified, unless prior approval in writing has been received from the buyer;

(5) To increase the price of the goods specified either by way of increasing the payments or substituting goods which are of a lower quantity of price;

(6) To fail to deliver to the buyer, on any date payment is made, a receipt showing the amount of that payment and the date thereof, and, upon request, the balance of payments made up to that date;

(7) To fail to disclose or misrepresent in any way the store's policy with reference to cancellations and repayment or non-repayment of payments already made, and in case payments are not refunded, to fail to disclose that fact in writing.

3.13: Pricing and Refund, Return and Cancellation Privileges

(1) Pricing.

(a) Failure to Disclose Price. It is an unfair and deceptive act or practice for any person subject to 940 CMR 3.13:

1. to fail to disclose to a buyer prior to any agreement the price or cost of any services to be provided, or

3.13: continued

2. to fail to affix to any goods offered for sale to consumers the price at which the goods are to be sold. As used in 940 CMR 3.13, the term “affix” shall mean to price an item individually by means of a pricing tag or sticker appended to the item, or by printing the price on the product or its packaging.
- (b) Exemptions for Electronic Scanner Systems. The requirement of 940 CMR 3.13(1)(a)2. shall not apply to any product which bears a Universal Product Code (“UPC”) barcode, either on the product or the product packaging or on a pricing tag or sticker appended to the product, provided that:
1. the seller employs an automated retail check out system (*see* M.G.L. c. 98, § 56D) at the store;
 2. the seller has available in the store for consumer use at least one electronic scanner for every 5,000 square feet of store selling space, with signs prominently posted adjacent to each scanner at and above eye level, identifying for consumers the location of the scanners. Stores with less than 5,000 square feet of selling space must provide, at a minimum, one such scanner for consumer use.
 3. the electronic scanners available for consumer use are capable of:
 - a. identifying and displaying the item by name or other distinguishing characteristics;
 - b. displaying the price of the item; and
 - c. producing an individual pricing tag for that item. At each scanner location, the seller must also provide the consumer with a means by which such pricing tag may be easily affixed or appended to the item or its packaging (*e.g.* adhesive pricing tag.) Such scanners must also be in compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Massachusetts Architectural Access Board Regulations 521 CMR 1.00 *et seq.*; and
 4. all items which are priced at \$500 or more must be individually priced pursuant to 940 CMR 3.13(1)(a)2..
- (c) Electronic Scanner Requirements A seller that employs an electronic scanner system for consumer use pursuant to 940 CMR 3.13(1)(b) shall comply with the following requirements with respect to any items not individually priced in accordance with 940 CMR 3.13(1)(a)2.:
1. the seller shall place a clear and conspicuous separate sign or shelf tag for the item, or a single sign in the case of similar items all priced the same or to which the same discount applies, at the point of display of each such item, with information sufficient to identify the item by name (for example, its brand name or description and model number, if applicable) and setting forth the current selling price of the item or the discount off the price affixed to the item. “Clear and conspicuous” as used in 940 CMR 3.13 shall mean that the price shall be of such size, color or contrast so as to be readily noticed and understood by a reasonable person to whom it is being disclosed;
 2. for items that cannot easily be carried to an electronic scanner because of their size or weight, the seller must provide a scannable card or other device at the point of display of the item, so that a consumer can take the card or device to the electronic scanner to obtain the price and, if the consumer chooses, a price tag for the item, and a means by which such price tag can be affixed to or appended from the item or its packaging; and
 3. the seller must establish a reasonable process to verify the accuracy of all sale prices in the seller’s electronic scanner system, and that all sale signs and shelf labels match such sale prices.
- (d) Additional Exemptions. The requirements of 940 CMR 3.13(1)(a)2. shall not apply to:
1. unpackaged items sold by length or area, such as chain, rope, flooring, lumber or fabric on a bolt, with a clear and conspicuous “price per” marked on the bolt or at the point of display;
 2. unpackaged items sold by weight or volume from a bulk container or source, such as stone or soil, with a clear and conspicuous “price per” marked on the container or at the point of display;
 3. items that must be retrieved for the consumer by store staff, such as large electronics or appliances, where the price is affixed to the individual display or representative items or items displayed in a locked case or out of reach of consumers;
 4. packaged self-service items that are small in size and offered for sale within five feet of the cash register, with a clear and conspicuous “price per” marked on the container or at the point of display;

3.13: continued

5. unpackaged items which have a weight of not more than two ounces, a volume of not more than three cubic inches, or a price of not more than .50¢, with a clear and conspicuous “price per” marked on the container or at the point of display;
 6. live animals and items sold in a coin operated vending machine, with a clear and conspicuous “price per” marked on the container or at the point of display;
 7. items that are located in end-aisle, segregated or other freestanding advertised “sale” promotional displays, as “sale” is defined in 940 CMR 6.00 *et seq.*, provided that:
 - a. a salesperson or cashier can readily discern the price of the exempted sale item; that no exempted item is affixed with an incorrect price; that the exempted item is on a current price list maintained by the seller as provided in 940 CMR 3.13(1)(d)8.; that such items are priced fully and accurately at their regular shelf or other location; and a clear and conspicuous separate sign, or a single sign in the case of similar items all priced the same, at the point of display of each exempted sale item reasonably identifies the item (for example, by its price, and brand name or description and model number, if applicable); or
 - b. for items offered at a percentage discount, *e.g.* “20% off regular price,” signs or charts at the point of display identify the discount and, if the regular price or other reference price is not affixed to the items, the actual selling price of the items offered;
 8. an additional 5% of stock keeping units (“SKU”) or UPCs offered for sale, provided that a clear and conspicuous separate sign, or a single sign in the case of similar items all priced the same, is placed at the point of display of each exempted item, with information sufficient to identify the item (for example, its brand name or description and model number, if applicable.) The store must maintain a current and accurate price list of all items exempted under 940 CMR 3.13(1)(d)8. The seller may maintain such a list in any reasonable manner, provided that information contained on the list can be referenced easily by the person requesting it. The seller shall make the list available at the service desk for public inspection.
- (e) Compliance. As a defense to any class actions brought pursuant to M.G.L. c. 93A, § 9, and any actions brought by the Attorney General pursuant to M.G.L. c. 93A, § 4, any person subject to 940 CMR 3.13 shall be deemed in compliance with 940 CMR 3.13(1)(a)2. if that person demonstrates at least 95% of the UPC s or SKUs required to be individually priced pursuant to 940 CMR 3.13(1)(a)2. are so priced (an individual UPC or SKU is deemed to comply with 940 CMR 3.13(1)(a)2. if at least 75% of the items in that UPC or SKU required to be individually priced are so priced). If the person relied on the exemption provided in 940 CMR 3.13(1)(b), in whole or in part, that person shall be deemed in compliance with 940 CMR 3.13(1)(b) if that person demonstrates that the electronic scanner system employed by the person maintains at least 98% accuracy, not including undercharges, and the person has substantially complied with the specific requirements of 940 CMR 3.13(1)(b)2., 3. and 4. and 940 CMR 3.13(1)(c)1. and 2.. Compliance with these requirements may be established by means of self-audits, which shall be conducted on at least a quarterly basis, using the sample collection procedures set forth in the National Conference on Weights and Measures Publication 19, *Examination Procedure for Price Verification* (October 1996 Edition). The address for the National Conference on Weights and Measures is: 15245 Shady Grove Road, Site 130, Rockville, MD 20850. NCWM Publication 19 is also available at <http://ts.nist.gov/ts/htdocs/230/235/h130-02/price.pdf>. Records of the results of such self-audits shall be maintained for a period of a minimum of 12 months.

3.13: continued

(f) Correct Pricing. It is an unfair or deceptive act or practice for any person subject to 940 CMR 3.13 to charge a consumer an incorrect price for any item offered for sale. The “correct price” is the lowest of: the advertised price in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof; the price indicated on any store sign, shelf label, price tag or price sticker for the item; or the price rung up by the store’s automated retail system; provided, however, that the seller shall have no obligation to sell such item at the lowest represented price if it is the result of a gross error, if it is based on the price marked on another unit of the same item and the tendered item is marked only with a higher price, or if the price tag, label or sign shows evidence of obvious physical tampering. A “gross error” is a price which was never intended as the selling price at any time during the previous 30 day period, and which, for an item with an actual selling price of not more than \$20.00, is less than half the price stated by the seller as the actual selling price, or which, for an item with an actual selling price of more than \$20.00, is more than 20% below the price stated by the seller as the actual selling price. If these provisions for establishing the correct price are not determinative in a particular situation, the correct price shall be the price on the seller’s current price list. Sellers shall maintain a price accuracy and missing price report. Whenever a consumer advises the store of an incorrect price on goods, signage, or register scanner, or that goods required to be price marked are missing such price marks, or that signs required to be posted are missing, or that a price is not in the register scanner, the store shall immediately fill out a price accuracy and missing price report with those details, and immediately correct the problem, making prompt payment to consumers who have been overcharged. It shall be a complete defense in any action brought under 940 CMR 3.13(1)(f) that the seller has complied with the provisions of 940 CMR 6.13(2).

(g) Effective Date. 940 CMR 3.13(1) becomes effective December 15, 2003.

(2) Deceptive Pricing. No claim or representation shall be made which represents or implies, in advertising or otherwise, that a product or service may be purchased for a specified price when such is not the case; or that a product or service is being offered for sale at a reduced price when such is not the case; or that such special or reduced price is to be in effect for a limited time only when such is not the case; or otherwise deceives purchasers or prospective purchasers with respect to the price of products or services offered for sale.

The following are examples of, but is not a complete list of practices declared unlawful by 940 CMR 3.13:

1. Representing or implying that a stated price is for a complete or functional product or service when in fact the product or service so priced is deficient as to parts or equipment or any other deficiency necessary and usual to the proper functioning and appearance of such product or to the usefulness and efficiency of such service;
2. Representing or implying that the price of the product includes certain services, such as delivery, installation, service or adjustments, or includes parts or accessories when such is not the case;
3. Representing or implying that prices applicable only to certain sizes to types of goods or services apply to other or all sizes or types of such goods or services.

(3) Deceptive Use of "Loss Leaders". It is an unfair trade practice to sell, or offer for sale, any product or service, at a price less than the cost thereof to the seller as a "loss leader" used in inducing the buyer to make the purchase and sold only in combination with the purchase of other merchandise or services on which the seller recovers such loss.

(4) Refunds, Return and Cancellation Privileges. It is unfair and deceptive trade practice:

- (a) To fail to clearly and conspicuously disclose to a buyer, prior to the consummation of a transaction, the exact nature and extent of the seller's refund, return, or cancellation policy;
- (b) To misrepresent the nature and terms of the seller's refund, return, or cancellation policy;
- (c) To fail to perform any promises made to a buyer in connection with the refund, return, or cancellation privileges.

3.14: Subscription and Mail Orders

(1) Misrepresentation of Books or Services. It is unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or misrepresentation, whether in the form of advertisement, testimonial, endorsement, illustration, or other form of representation however disseminated or published concerning the grade, quality, material, size, contents, use, value, price, origin, preparation, manufacturer, or date of publication or copyright of any book, or the current or up to date character thereof or concerning the grade, quality, substance, size, manufacture, or the value of the binding thereof or the lettering thereon, or concerning any service offered in connection therewith, or in any other material respect.

(2) Misrepresentation of Books Being Free. In the sale or offering for sale of books, it is an unfair trade practice to represent, through advertising or otherwise, that such books are given free and that payments required in connection therewith are for supplements thereto or for extension, revision, continuation, yearbook, or other similar services or for services to be rendered by a research or other bureau, when such is not the fact; or that a certain number of books have been reserved to be given away free of cost to selected persons as a means of advertising, or that a certain number of persons in a community have been designated to receive a book or books or any form of service free of cost, when such is not the fact.

(3) Misrepresentation as to the Nature of Business. It is unfair trade practice for a seller:

(a) To use, or cause to be used, any representation or inference

1. That such seller is an association or organization of educators, teachers, engineers, or scientists, or of persons having other professional or technical qualifications when such is not in fact true; or

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3.14: continued

2. That the business of such seller is other than a private business enterprise operated for profit when such is not the fact; or
 3. That such seller is a book publisher or a representative or distributor for a book publisher when such is not the fact; or
- (b) To misrepresent in any manner the character, extent or type of business of such seller.

(4) Misrepresentation as to Connection with Educational Institution. It is an unfair trade practice for any seller to represent through advertising or otherwise, that it or its sales representatives are connected in any manner with any school, college, university, or other educational institution, or with any board or committee thereof, or with any other organization, or that any book or service sold or offered by it is required, endorsed or approved by any such institution, board, committee, or organization when such is not the fact.

3.15: New for Used, Substitution of Products, Failure to Deliver

(1) New for Used. It is unfair and deceptive trade practice to represent, directly or indirectly, that a product is new or unused, or that any part of a product is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof. It is further an unfair and deceptive trade practice for a seller to offer for sale or sell any product which is used, contains used parts; is rebuilt, remanufactured, reconditioned, or contains rebuilt, remanufactured, or reconditioned parts; or has the appearance of being new when it is not; unless prior, clear and conspicuous disclosure that such a product has been used, rebuilt, remanufactured or reconditioned, or that it contains used, rebuilt, remanufactured or reconditioned parts, is made to the buyer or prospective buyer.

The disclosure that a product has been used or contains used parts as required by the previous paragraph may be made by use of a word such as, but not limited to, "Used," "Second Hand," "Repaired," "Remanufactured," "Reconditioned," "Rebuilt," or "Relined," whichever is applicable to the product involved.

(2) Substitution of Products. It is an unfair and deceptive trade practice to make a substitution of products:

- (a) By shipping, delivering, or installing products which do not conform to samples submitted or to specifications upon which the sale is consummated to induced, or to the representations made prior to securing the order, without advising the purchaser of the substitution and obtaining his consent thereto prior to making shipment, delivery, or installation;
- (b) By falsely representing the reason for making the substitution in order to induce consent; or
- (c) When there was no intention to deliver the original merchandise ordered.

(3) Failure to Deliver. It is an unfair and deceptive act or practice:

- (a) To advertise or promise prompt delivery where delivery is neither prompt nor expeditious.
- (b) To fail to deliver merchandise ordered by mail or otherwise on which payment has been made or undertaken, in the form of a deposit, down payment or total payment where a definite delivery date has been set unless the seller can show circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the delivery date.
- (c) To accept an order for goods, or services, where delivery is not, because of facts known to the seller, contemplated within four weeks, unless a later delivery date is specifically agreed upon by the buyer and the seller.

3.16: General

Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of M.G.L. c.93A, § 2 if:

3.16: continued

- (1) It is oppressive or otherwise unconscionable in any respect; or
- (2) Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction; or
- (3) It fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection; or
- (4) It violates the Federal Trade Commission Act, the Federal Consumer Credit Protection Act or other Federal consumer protection statutes within the purview of M.G.L. c. 93A, § 2.

3.17: Landlord-Tenant

- (1) Conditions and Maintenance of a Dwelling Unit. It shall be an unfair or deceptive act or practice for an owner to:
 - (a) Rent a dwelling unit which, at the inception of the tenancy
 1. contains a condition which amounts to a violation of law which may endanger or materially impair the health, safety, or well-being of the occupant; or
 2. is unfit for human habitation;
 - (b) Fail, during the terms of the tenancy, after notice is provided in accordance with M.G.L. c. 111, § 127L, to
 1. remedy a violation of law in a dwelling unit which may endanger or materially impair the health, safety, or well-being of the occupant, or
 2. maintain the dwelling unit in a condition fit for human habitation; provided, however, that said violation of law was not caused by the occupant or others lawfully upon said dwelling unit;
 - (c) Fail to disclose to a prospective tenant the existence of any condition amounting to a violation of law within the dwelling unit of which the owner had knowledge or upon reasonable inspection could have acquired such knowledge at the commencement of the tenancy;
 - (d) Represent to a prospective tenant that a dwelling unit meets all requirements of law when, in fact, it contains violations of law;
 - (e) Fail within a reasonable time after receipt of notice from the tenant to make repairs in accordance with a pre-existing representation made to the tenant;
 - (f) Fail to provide services and/or supplies after the making of any representation or agreement, that such services would be provided during the term or any portion of the term of the tenancy agreement;
 - (g) Fail to reimburse the tenant within a reasonable or agreed time after notice, for the reasonable cost of repairs made or paid for, or supplies or services purchased by the tenant after any representation, that such reimbursement would be made;
 - (h) Fail to reimburse an occupant for reasonable sums expended to correct violations of law in a dwelling unit if the owner failed to make such corrections pursuant to the provisions of M.G.L. c. 111, § 127L, or after notice prescribed by an applicable law;
 - (i) Fail to comply with the State Sanitary Code or any other law applicable to the conditions of a dwelling unit within a reasonable time after notice of a violation of such code or law from the tenant or agency.
- (2) Notices and Demands. It shall be an unfair or deceptive practice for an owner to:
 - (a) Send to a tenant any notice or paper which appears or purports to be an official or judicial document but which he knows is not;
 - (b) Fail or refuse to accept any notice sent to any address to which rent is customarily sent, or given to any person who customarily accepts on behalf of the owner, or sent to the person designated in the rental agreement in accordance with 940 CMR 3.17(3)(b)2.

3.17: continued

(c) Demand payment for increased real estate taxes during the term of the tenancy unless, prior to the inception of the tenancy, a valid agreement is made pursuant to which the tenant is obligated to pay such increase.

(3) Rental Agreements.

(a) It shall be unfair or deceptive act or practice for an owner to include in any rental agreement any term which:

1. Violates any law;
2. Fails to state clearly and conspicuously in the rental agreement the conditions upon which an automatic increase in rent shall be determined. Provided, however, that nothing contained in 940 CMR 3.17(3)(a)2. shall be deemed to invalidate an otherwise valid tax escalator clause;
3. Contains a penalty clause not in conformity with the provisions of M.G.L. c. 186, § 15B;
4. Contains a tax escalator clause not in conformity with the provisions of M.G.L. c. 186, § 15C;

(b) It shall be an unfair or deceptive practice for an owner to enter into a written rental agreement which fails to state fully and conspicuously, in simple and readily understandable language:

1. The names, addresses, and telephone numbers of the owner, and any other person who is responsible for the care, maintenance and repair of the property;
2. The name, address, and telephone number of the person authorized to receive notices of violations of law and to accept service of process on behalf of the owner;
3. The amount of the security deposit, if any; and that the owner must hold the security deposit in a separate, interest-bearing account and give to the tenant a receipt and notice of the bank and account number; that the owner must pay interest, at the end of each year of the tenancy, if the security deposit is held for one year or longer from the commencement of the tenancy; that the owner must submit to the tenant a separate written statement of the present condition of the premises, as required by law, and that, if the tenant disagrees with the owner's statement of condition, he/she must attach a separate list of any damage existing in the premises and return the statement to the owner; that the owner must, within thirty days after the end of the tenancy, return to the tenant the security deposit, with interest, less lawful deductions as provided in M.G.L. c. 186, § 15B; that if the owner deducts for damage to the premises, the owner shall provide to the tenant, an itemized list of such damage, and written evidence indicating the actual or estimated cost of repairs necessary to correct such damage; that no amount shall be deducted from the security deposit for any damage which was listed in the separate written statement of present condition or any damage listed in any separate list submitted by the tenant and signed by the owner or his agent; that, if the owner transfers the tenant's dwelling unit, the owner shall transfer the security deposit, with any accrued interest, to the owner's successor in interest for the benefit of the tenant.

(c) It shall be unfair and deceptive practice for an owner to fail to give the tenant an executed copy of any written rental agreement within 30 days of obtaining the signature of the tenant thereon.

(4) Security Deposits and Rent in Advance. It shall be an unfair or deceptive practice for an owner to:

(a) require a tenant or prospective tenant, at or prior to the commencement of any tenancy, to pay any amount in excess of the following:

1. rent for the first full month of occupancy; and
2. rent for the last full month of occupancy calculated at the same rate as the first month; and
3. a security deposit equal to the first month's rent; and,
4. the purchase and installation cost for a key and lock.

or, at any time subsequent to the commencement of a tenancy, demand rent in advance in excess of the current month's rent or a security deposit in excess of the amount allowed by 940 CMR 3.17(4)(a)3.

3.17: continued

- (b) fail to give to the tenant a written receipt indicating the amount of rent in advance for the last month of occupancy, and a written receipt indicating the amount of the security deposit, if any, paid by the tenant, in accordance with M.G.L. c. 186, § 15B;
- (c) fail to pay interest at the end of each year of the tenancy, on any security deposit held for a period of one year or longer from the commencement of the term of the tenancy, as required by M.G.L. c. 186, § 15B;
- (d) fail to hold a security deposit in a separate interest-bearing account or provide notice to the tenant of the bank and account number, in accordance with M.G.L. c. 186, § 15B;
- (e) fail to submit to the tenant upon receiving a security deposit or within ten days after commencement of the tenancy, whichever is later, a separate written statement of the present condition of the premises in accordance with M.G.L. c. 186, § 15B;
- (f) fail to furnish to the tenant, within 30 days after the termination of occupancy under a tenancy-at-will or the end of the tenancy as specified in a valid written rental agreement, an itemized list of damage, if any, and written evidence indicating the actual or estimated cost of repairs necessary to correct such damage, in accordance with M.G.L. c. 186, § 15B;
- (g) fail to return to the tenant the security deposit or balance thereof to which the tenant is entitled after deducting any sums in accordance with M.G.L. c. 186, § 15B, together with interest, within thirty days after termination of occupancy under a tenancy-at-will agreement or the end of the tenancy as specified in a valid written rental agreement;
- (h) deduct from a security deposit for any damage which was listed in the separate written statement of present condition given to the tenant prior to execution of the rental agreement or creation of the tenancy, or any damages listed in any separate list submitted by the tenant and signed by the owner or his agent;
- (i) fail, upon transfer of his interest in a dwelling unit for which a security deposit is held, to transfer such security deposit together with any accrued interest for the benefit of the tenant to his successor in interest, in accordance with M.G.L. c. 186, § 15B;
- (j) fail, upon transfer to him of a dwelling unit for which a security deposit is held, to assume liability for the retention and return of such security deposit, regardless of whether the security deposit was, in fact, transferred to him by the transferor of the dwelling unit, in accordance with M.G.L. c. 186, § 15B; provided, that 940 CMR 3.17(4)(j) shall not apply to a city or town which acquires property pursuant to M.G.L. c. 60 or to a foreclosing mortgagee or a mortgagee in possession which is a financial institution chartered by the Commonwealth or the United States, or;
- (k) otherwise fail to comply with the provisions of M.G.L. c. 186, § 15B.

940 CMR 3.00 shall not be deemed to limit any rights or remedies of any tenant or other person under M.G.L. c. 186, §§ 15B(6) or (7).

- (5) Evictions and Termination of Tenancy. It shall be an unfair and deceptive practice for an owner to:
 - (a) Deprive a tenant of access to or full use of the dwelling unit or otherwise exclude him without first obtaining a valid writ of execution for possession of the premises as set forth in M.G.L. c. 239 or such other proceedings authorized by law;
 - (b) Commence summary process for possession of a dwelling unit before the time period designated in the notice to quit under M.G.L. c. 186, §§ 11 and 12, has expired; provided, however, nothing in 940 CMR 3.17 shall effect the rights and remedies contained in M.G.L. c. 239 § 1A.
- (6) Miscellaneous. It shall be an unfair and deceptive practice for an owner to:
 - (a) Impose any interest or penalty for late payment or rent unless such payment is 30 days overdue;
 - (b) Retaliate or threaten to retaliate in any manner against a tenant for exercising or attempting to exercise any legal rights as set forth in M.G.L. c. 186, § 18;
 - (c) Retain as damages for a tenant's breach of lease, of the failure of a prospective tenant to enter into a written rental agreement after signing a rental application, any amount which exceeds the damages to which he is entitled under the law, or an amount which the parties have otherwise agreed as to the amount of the damages;

3.17: continued

- (d) Require payment for rent for periods during which the tenant was not obligated to occupy and did not in fact occupy the dwelling unit unless otherwise agreed to in writing by the parties;
- (e) Enter a dwelling unit other than (i) to inspect the premises, or (ii) to make repairs thereto, or (iii) to show the same to a prospective tenant, purchaser, mortgagee or its agents, or (iv) pursuant to a court order, or (v) if the premises appear to have been abandoned by the tenant, or (vi) to inspect, during the last 30 days of the tenancy or after either party has given notice to the other of intention to terminate the tenancy, for the purpose of determining the amount of damage, if any, to the premises which would be cause of reduction from any security deposit held by the owner.
- (f) To violate willfully any provisions of M.G.L. c. 186, § 14.
- (g) It shall be an unfair practice for any owner who is obligated by law or by the express or implied terms of any tenancy agreement to provide gas or electric service to an occupant:
 - 1. To fail to provide such service; or
 - 2. To expose such occupant to the risk of loss of such service by failing to pay gas or electric bills when they become due or by committing larceny or unauthorized use of such gas or electricity. For the purpose of this regulation a bill shall be deemed "due" only after the owner has had an opportunity to contest it at a Department of Public Utilities hearing or any appeal from such hearing during which termination of service has been stayed.

3.18: Price Gouging

- (1) It shall be an unfair or deceptive act or practice, during any market emergency, for any petroleum-related business to sell or offer to sell any petroleum product for an amount that represents an unconscionably high price.
- (2) A price is unconscionably high if:
 - (a) the amount charged represents a gross disparity between the price of the petroleum product and
 - 1. the price at which the same product was sold or offered for sale by the petroleum-related business in the usual course of business immediately prior to the onset of the market emergency, or
 - 2. the price at which the same or similar petroleum product is readily obtainable by other buyers in the trade area; and
 - (b) the disparity is not substantially attributable to increased prices charged by the petroleum-related business suppliers or increased costs due to an abnormal market disruption.

3.19: Severability

If any provision of 940 CMR 3.00 or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of 940 CMR 3.00 and the applicability of such provision to other persons or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

940 CMR 3.00: M.G.L. c. 93A, § 2(c).

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