

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 18.00: Conduct of the Business of Debt Collectors and Loan Servicers~~CONDUCT OF THE BUSINESS OF DEBT COLLECTORS AND LOAN-SERVICERS~~

Section

- 18.01: Purpose and ~~Scope~~ Applicability
- 18.02: Definitions
- 18.03: Application Procedures
- 18.04: Licensing Standards
- 18.05: Registration Procedures
- 18.06: Registration Standards
- 18.07: Office Locations
- 18.08: Notice of Significant Events and Proposed Change in Ownership or Personnel
- 18.09: Annual Reports
- 18.10: Books and Records
- 18.11: Commingling
- 18.12: Preserving Identity of Funds of Clients
- 18.13: Acquisition of Location Information
- 18.14: Communication in Connection with Debt Collection
- 18.15: Harassment or Abuse
- 18.16: False or Misleading Representations
- 18.17: Unfair Practices
- 18.18: Validation of Debts
- 18.19: Multiple Debts
- 18.20: Furnishing Certain Deceptive Forms
- 18.21: Unfair Servicing Practices-~~General~~  
18.21A: Mortgage Loan Servicing Practices
- 18.22: Relation to Other Laws
- 18.23: Preemption by Federal Law
- 18.24: Effective Date

18.01: Purpose and ~~Scope~~ Applicability-

(1) Purpose. The purpose of 209 CMR 18.00 is to establish standards, by defining unfair or deceptive acts or practices, for the collection of debts from persons within the Commonwealth of Massachusetts by debt collectors and third party loan servicers, and to establish procedures and requirements for the licensing and supervision of debt collectors and the registration and supervision of third party loan servicers.

(2) Applicability.

(a) Persons exempt from the licensing and registration provisions pursuant to M.G. L. c. 93, § 24A(c) who conduct the business of a debt collector or third party loan servicer as defined in 209 CMR 18.02, shall be subject to the provisions governing fair debt collection and loan servicing practices at 209 CMR 18.13 through 18.21A, and shall not be subject to the provisions of 209 CMR 18.03 through 209 CMR 18.12.

(b) Any person licensed as a debt collector shall not be required to register as a third party loan servicer. However, any debt collector who engages in third party loan servicing activities

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must, in addition to complying with all state and federal laws and regulations applicable to debt collection activities, comply with all pertinent state and federal laws and regulations governing third party loan servicers, including but not limited to the provisions of 209 CMR 18.21 and 18.21A.

(c) Nothing contained in 209 CMR 18.00 shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application, or to require information in addition to that required by the application form provided to the applicant.

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#### 18.01A: Applicability

~~Any person licensed as a debt collector shall not be required to register as a third party loan servicer. However, any debt collector who engages in third party loan servicing activities must, in addition to complying with all state and federal laws and regulations applicable to debt collection activities, comply with all pertinent state and federal laws and regulations governing third party loan servicers, including but not limited to the provisions of 209 CMR 18.21 and 18.21A.~~

#### 18.02: Definitions

Applicant means any debt collector who is required to be licensed under the provisions of M.G.L. c. 93, § 24A. The term shall include partners or members, if the applicant is a partnership or association, and officers, directors and principal employees, if the applicant is a corporation.

Commissioner means the Commissioner of Banks.

Communication or communicating means conveying information regarding a debt directly or indirectly to any person through any medium.

Consumer means any natural person obligated or allegedly obligated to pay any debt.

Consumer reporting agency means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties under M.G.L. c. 93, § 50 through 68.

Creditor means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

Debt means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.

Debt collector means any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. Debt collector shall also include any person who buys or acquires debt that is in default at the time of purchase or acquisition and who seeks to collect such debt directly. Notwithstanding the exclusion provided by clause (f), debt collector shall include a creditor who, in the process of collecting his own debt, uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt. Debt collector shall also include a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the enforcement of security interests. Debt collector shall not include:-

- (a) an officer or employee of a creditor while, in the name of the creditor, collecting debts for the creditor;
- (b) a person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for a person to whom it is so related or affiliated and if the principal business of the person is not the collection of a debt;
- (c) an officer or employee of the United States or a state of the United States to the extent that collecting or attempting to collect a debt is in the performance of his official duty;
- (d) a person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of a debt;
- (e) a nonprofit organization which, at the request of a consumer, performs bona fide consumer credit counseling and assists the consumer in the liquidation of debts by receiving payments from the consumer and distributing the amounts to creditors;
- (f) a person collecting or attempting to collect a debt owed or due or asserted to be owed or due another to the extent the activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by the person; (iii) concerns a debt which was not in default at the time it was obtained by the person; or (iv) concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor;
- (g) attorneys-at-law licensed to practice law in the Commonwealth who are collecting a debt on behalf of a client; and
- (h) an agent or independent contractor employed for the purpose of collecting a charge or bill owed by a tenant to a landlord or owed by a customer to a corporation subject to the supervision of the Department of Telecommunications and Energy or the Division of Insurance insofar as the person collects charges or bills only for the landlord or supervised corporations.

Location information means a consumer's place of abode and his telephone number at such place, or his place of employment.

Licensee means any person who is licensed by the Commissioner as a debt collector under G.L. c. 93, ss. 24 through 28 and 209 CMR 18.00.

Net Worth means the applicant's or licensee's total assets less total liabilities, omitting the following assets:

- (a) that portion of an applicant's assets pledged to secure obligations of any person or entity other than that of the applicant;
- (b) any asset due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest;
- (c) an amount in excess of the cost or fair market value of mortgage loans in foreclosure, or real property acquired through foreclosure;
- (d) an investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates, which is greater than the fair market value of the assets;
- (e) goodwill or value placed on insurance renewals or other similar intangible value;
- (f) organization costs;
- (g) the value of servicing contracts not determined in accordance with the Financial Accounting Standards Board's ("FASB") Codification Topic 860 "Transfers and Servicing", Statement of Financial Accounting Standards No. 65, "Accounting for Certain Mortgage Banking Activities", and any subsequent revisions thereto; and
- (h) any other intangible asset, as may be determined by the Commissioner.

Person means a natural person or an organization, including a corporation, limited or general partnership, limited liability partnership, limited liability company, joint stock company, trust, business trust, profit and not-for-profit incorporated or unincorporated associations, and any other entity authorized under the laws of any state of the United States or any country.

Principal employee means any person with the power to exercise, directly or indirectly, managerial, supervisory, or policy-making authority or such other controlling influence over the management, policies, or operation of the Licensee.

Register means filing a notice with the Commissioner on a form prescribed by the Commissioner that notifies the Commissioner of the intent to engage in the activities of a third party loan servicer in this state and the payment of a fee required under G.L. c. 93, s. 24C, along with the other documents, proofs, and fees required by the Commissioner.

Servicing means receiving a scheduled periodic payment from a consumer pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage, servicing includes making payments to the borrower.

Third party loan servicer means a person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is servicing a loan directly or indirectly, owed or due or asserted to be owed or due another.

### 18.03: Application Procedures

(1) Application. Each Applicant for a license as a debt collector shall submit a written application on a form prescribed by the Commissioner, signed under the pains and penalties of perjury, containing such information as the Commissioner may from time to time require.

(2) License Requirements. An Applicant shall be required to submit detailed information supporting the following general requirements:

- (a) Financial Responsibility. An Applicant for a debt collector license shall demonstrate and provide the Commissioner with evidence of its financial responsibility and submit a sworn statement which states that the Applicant meets the foregoing requirement. For the purposes of 209 CMR 18.03(2)(a), an Applicant shall demonstrate and maintain, a positive net worth. A ~~debt collector's~~ licensee's failure to ~~demonstrate~~ maintain a positive net worth at any time in which the debt collector license is in effect ~~may~~ shall constitute ~~presumptive~~ presumptive evidence that the licensee has failed to satisfy the financial responsibility requirements of 209 CMR 18.03(2)(a). ~~For Licensees who exhibit a negative net worth, the Commissioner, in his discretion, may require a~~ consider the impact of the omission of goodwill in the calculation of the Licensee's net worth. In such cases, the Licensee may be required to furnish a bond, in addition to the requirements pursuant to M.G.L. 93, sections 24A, 25 and 26, in a sum based upon the Licensee's volume of collections, as determined by the Commissioner. The bond shall run to the state treasurer and be executed by the licensee and by a surety company approved by the commissioner.
- (b) Financial statements. An Applicant shall submit financial statements prepared in accordance with U.S. generally accepted accounting principles, in U.S. dollars, meeting the following minimum requirements:
  1. Contents. The financial statements required by 209 CMR 18.00 shall include, but are not limited to, a Balance Sheet, Income Statement, ~~and~~ Statement of Cash Flows, Statement of Stockholder's Equity, and all relevant notes thereto.
  2. Initial Application. An Applicant for a debt collector license shall submit financial statements audited by an independent certified public accountant, ~~within 120 days of the close of its fiscal year~~. If audited financial statements of an applicant were not prepared, the Applicant shall submit financial statements reviewed by an independent certified public accountant. If an Applicant has not conducted any business, it shall submit an initial Balance Sheet which has been audited or reviewed by an independent certified public accountant, within 120 days of the close of its fiscal year. At the discretion of the Commissioner and under such conditions as he may impose, an Applicant's ~~Applicant's~~ unaudited financial statements may be submitted with audited consolidated ~~financial statements of its parent. If audited or reviewed~~

~~statements were not prepared, an applicant must submit unaudited financial statements of its parent, including a statement of condition and income and expense. Unaudited statements must include all supporting schedules and be completed in accordance with generally accepted accounting principles. In addition, the statements must be dated not more than 90 days prior to the date of application and must be signed under the pains and penalty of perjury by an authorized officer of the Applicant.~~

3. Renewal Applications. Each license shall expire annually on a date determined by the Commissioner. An Applicant for license renewal shall submit ~~unconsolidated, entity-only~~ financial statements which have been either audited or reviewed by an independent Certified Public Accountant within ~~120~~ 90 days of the close of its fiscal year. At the discretion of the Commissioner and under such conditions as he may impose, a Licensee may submit unaudited entity-only financial statements with its parent's audited consolidated financial statements.
  4. Audit Scope. An applicant's audited financial statements shall be performed in accordance with generally accepted auditing standards and reviewed financial statements shall be performed in accordance with Statements of Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.
- (c) Character and Fitness. An Applicant shall submit information demonstrating that the Applicant possesses the character, reputation, integrity and fitness to engage in the business of a debt collector in an honest, fair, sound, and efficient manner.
- (d) Other Information. An Applicant shall submit such other information as the Commissioner may deem necessary to properly evaluate an application.

#### 18.04: Licensing Standards

- (1) A license to engage in the business of a debt collector will be issued to an Applicant if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of M.G.L. c. 93, ss. 24 through 28 and 209 CMR 18.03 have been met.
- (2) The Commissioner may deny an application for a license to engage in the business of a debt collector, or the renewal thereof, if the Applicant has not satisfied the requirements of M.G.L. c. 93, §§ 24 through 28 or 209 CMR 18.03, or for any of the following reasons, if the Applicant, or any partner, member, officer, director, or equivalent, or principal employee has:
- (a) violated, or engaged in a pattern of violations, of any state or federal law applicable to the conduct of the business of a debt collector, including but not limited to M.G.L. c. 93A, M.G.L. c. 93, §§ 24 through 28, inclusive, or any rule, regulation, or administrative order or directive promulgated thereunder;
  - (b) defaulted on a payment of money collected or received for another;
  - (c) within ten years prior to the filing of the application, (1) been convicted of or pleaded *nolo contendere* to a felony, (2) had any adverse judgments entered against it in any court action or in any administrative enforcement action, in any jurisdiction, based upon allegations of fraud, misrepresentation, or dishonesty,

- or (3) committed any act involving dishonesty, fraud, or deceit, which act is substantially related to the qualifications, functions, or duties of a person engaged in the business of a debt collector;
- (d) made, or caused to be made, a false or misleading statement of a material fact in the application; or has withheld from the Commissioner any information which, if submitted by the Applicant, would have warranted the Commissioner in refusing to issue such license;
- (e) conducted, or will conduct, its business in an unsafe and unsound manner;
- ~~(f) in its audited or reviewed financial statements, a notation made by an independent certified public accountant referencing existing conditions that raise doubt about the Applicant's ability to continue as a going concern;~~
- ~~(g)~~(f) an adverse credit history, as determined by the Commissioner, upon review of a current credit report submitted with the application pursuant to 209 CMR 18.03(1). For the purposes of 209 CMR 18.04(2)(f), an adverse credit history, reviewed as of the date of application, shall include, but is not limited to, any outstanding lien or unsatisfied judgment, an uncured default upon a government sponsored loan or student loan, or any other delinquent account in excess of sixty (60) days past due;
- ~~(h)~~(g) (1) had a license or registration denied, suspended, or revoked by the Commissioner or the licensing authority of any other state; (2) been a partner, member, officer, director, manager, or equivalent of an entity which has had a license or registration revoked by the Commissioner, or the licensing authority of any other state; or (3) if a natural person, either individually or as an employee, while acting in the course of the debt collection business, acted in a manner which would have warranted the Commissioner in suspending or revoking the license of the individual or entity;
- ~~(i)~~(h) within twenty-four (24) months of the date of application, been the subject of an order of the Commissioner denying an application for a license or an order denying, suspending, or revoking that person's license as a debt collector; or
- ~~(j)~~(i) failed to respond to a written notification of a deficiency in the application, or in any other relevant information required by the Commissioner to be submitted with the application, within thirty (30) days of the date of such written notice from the Division.

(3) An Applicant whose application has been denied under 209 CMR 18.03(2) may appeal the Commissioner's action under G.L. c. 93, § 24G.

(4) Waiver of Prohibition on Reapplication for a License. Notwithstanding the provisions of 18.04(2)(h), the Commissioner may consider an application for a debt collector license within twenty-four (24) months of the date of an order from the Commissioner denying, suspending, or revoking that person's license as a debt collector, if the Commissioner finds sufficient evidence to support a belief that the condition(s) which resulted in an order denying, suspending, or revoking the license of the Applicant or licensee are not likely to recur and that all of the requirements of M.G.L. c. 93 §§24 through 28, inclusive, and 209 CMR 18.00 et seq. have been satisfied.

#### 18.05: Registration Procedures

(1) Registration. Each Applicant for registration as a third party loan service shall submit a written registration on a form prescribed by the Commissioner, signed under the pains and penalties of perjury, containing such information as the Commissioner may from time to time require including, but not limited to, a description of the activities of the Applicant.

(2) Renewal of Registration. Each registration shall expire annually on a date determined by the Commissioner. An Applicant for a renewal of its registration shall submit such information as the Commissioner may deem necessary.

~~(3) Any person licensed as a debt collector shall not be required to register as a third party loan servicer.~~

#### 18.06: Registration Standards

(1) A registration as a third party loan servicer will be issued to an Applicant if the Commissioner, upon review of the registration and all other relevant information, determines that all of the requirements of M.G.L. c.93 , ss. 24 through 24G and 209 CMR 18.05 have been met.

(2) The Commissioner may deny an application for registration as a third party loan servicer, or the renewal thereof, if the Commissioner upon review of the application and other relevant information, determines that the Applicant has not satisfied the requirements of M.G.L. c.93, §§ 24 through 24G or 209 CMR 18.05 or has violated any provision of M.G.L. c.93, §§24 – 28 and 209 CMR 18.00 et seq.

#### 18.07: Office Locations

(1) Branch Offices. A Licensee who intends to carry on its business at any location in addition to the address on its original license shall submit an application to the Commissioner, in writing, at least thirty days prior to the opening of the branch location. Such application shall contain the address of any such place and such other information as the Commissioner may require.

(2) Relocations and Closings. A Licensee or registered third party loan servicer shall provide thirty days prior written notice of any change or closing of a location to the Commissioner and shall contain such other information as the Commissioner may require.

~~(3) License Posting. A Licensee or registered third party loan servicer shall prominently post its license, or copies of such license or registration issued by the Commissioner under 209 CMR 18.04 or 18.06, in each place of business of the Licensee or third party loan servicer. Copies of licenses or registrations for posting in authorized branch offices may be obtained at a reasonable cost from the Commissioner.~~

#### 18.08: Notice of Significant Events and Proposed Change in Ownership or Personnel

(1) A debt collector, or registered third party loan servicer if applicable, shall notify the Commissioner immediately, and in writing within one business day, of the occurrence of any of the following significant developments:

- (a) Filing for bankruptcy or reorganization of the Licensee or registered third party loan servicer, any partner, member, officer, director, or equivalent, or principal employee.
- (b) The filing of a criminal indictment any way related to the activities of the debt collector or registered third party loan servicer, any partner, member, officer, director, or equivalent, or principal employee, including, but not limited to, the handling and/or reporting of moneys received and/or instruments sold.
- (c) Notification of the institution of license denial, cease and desist, suspension, or revocation procedures, or other formal or informal regulatory action, in any state against the debt collector or registered third party loan servicer, and the reasons thereof.
- (d) Receiving notification of the initiation of any action by the Attorney General of the Commonwealth or of any other state, pursuant to M.G.L. c. 93A, or any other comparable consumer protection statute, and the reasons thereof.
- (e) Receiving notification of the initiation of a class action lawsuit on behalf of consumers against the Licensee or registered third party loan servicer that is substantially related to the operation of the licensed business.
- (f) Any partner, member, officer, director, or equivalent, or principal employee being convicted of a misdemeanor that is in any way related to debt collector or loan servicing activities; or of any felony whatsoever, ~~crime~~.
- (g) Any change to net worth resulting from market valuation or future loss liability or any other change which causes the net worth of the debt collector to fall below the requirements of 209 CMR 18.043(2)(a4).
- (h) Closing or shortage of any trust account where funds of clients paid to a debt collector are deposited.

(2) (a) 15 days prior to any proposed change in control in the ownership of a Licensee, or among the officers, partners or directors of a Licensee, a notice shall forthwith be filed with the Commissioner who may thereupon cause such investigation to be made as he deems necessary, as if it were a new license. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire 10% of the stock, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation.

- (b) A notice of change in personnel or ownership shall contain the following information:
  1. the name, address and occupation of each proposed officer, partner, director or shareholders; and
  2. provide such other information as the Commissioner may require.

#### 18.09: Annual Reports

Annually, on a date determined by the Commissioner, each debt collector or registered third party loan servicer shall file an annual report with the Commissioner in such form as the Commissioner shall prescribe for the preceding year. The annual report shall

be in writing, subscribed by the debt collector or registered third party loan servicer under the pains and penalties of perjury.

#### 18.10: Books and Records

(1) Each Licensee or registered third party loan servicer shall keep and use its books, records and accounts in a manner which will allow the Commissioner to determine whether the Licensee or registered third party loan servicer is complying with the provisions of G.L. c. 93 and applicable state and federal laws and regulations. Each licensee shall comply with the provisions of 209 CMR 48.00. The following records shall be maintained:

- (a) Debt Collector. Each debt collector shall retain for a minimum of two years after final remittance is made on any account placed with the debt collector for collection or after any account has been returned to the creditor whether or not payments have been made. Books and records shall conform to generally accepted accounting principles. A debt collector shall comply with the provisions of the Abandoned Property Act, M.G.L. c. 200A.
- (b) Third Party Loan Servicer. Each registered third party loan servicer shall retain for a minimum of two years after the conclusion of its fiscal year the records, books, accounts, and documents pertaining to the registered third party loan servicer's business.

(2) A Licensee who does not maintain an office in the Commonwealth and whose principal place of business is located outside of the Commonwealth may designate a resident agent within the Commonwealth for the purpose of complying with 209 CMR 18.10(1). The appointment of a resident agent shall require the prior approval of the Commissioner and shall be subject to such terms and conditions as the Commissioner may require from time to time.

(3) The Commissioner may also prescribe the extent to which such books, records and accounts shall be audited. Additional audits by independent certified public accountants shall be conducted whenever the Commissioner deems it expedient. Said audits shall be submitted to the Commissioner immediately upon completion. The cost of all such audits shall be borne by the Licensee or registered third party loan servicer.

(4) In addition to the reports required by law, a licensee or registered third party loan servicer shall make such other statements and reports to the Commissioner as he or she may require from time to time. The Commissioner may require regular quarterly reports and may furnish blank forms for all such statements or reports, required by 209 CMR 18.10.

#### 18.11: Commingling

No debt collector shall commingle money collected for a creditor with the debt collector's own funds or use any part of a creditor's money in the conduct of the debt collector's business.

#### 18.12: Preserving Identity of Funds of Clients

(1) All funds of clients paid to a debt collector shall be deposited in one or more trust accounts maintained at a federally insured bank.

(2) The gross amount of monies collected from consumers by the debt collector shall be deposited into the trust account(s).

(3) In remitting to clients, a debt collector may offset funds in the trust account(s) against commissions to which it is entitled for payments made by consumers directly to clients. All offsets shall be accounted for through written documentation evidencing the amount of offset.

(4) A debt collector shall maintain complete and accurate trust account records. A debt collector shall produce, upon request, all documents pertaining to trust account activity, including, but not limited to: bank settlements, check stubs, canceled, voided or unused checks, deposit tickets, and reconciliations or other comparable account records.

#### 18.13: Acquisition of Location Information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) not cause expense to any such person in the form of long distance telephone calls, text messaging, download fees, data usage fees, or other similar charges; and

~~(7)(6)~~ after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

#### 18.14: Communication in Connection with Debt Collection

(1) Communication with the consumer generally. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(a) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock A.M. and before 9 o'clock P.M local time at the consumer's location;

(b) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(c) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication; or if the consumer has made a written or oral request that such telephone calls not be made at the place of employment, provided, that any oral request shall be valid for only ten days unless the consumer provides written confirmation postmarked or delivered within seven days of such request. A consumer may at any time terminate such a request by written communication to the debt collector;

(d) if the debt collector engages any consumer in communication via telephone or via text messaging, initiated by the ~~debt collector, collection agency,~~ in excess of two such communicationsealls in each seven-day period ~~to~~ at a consumer's residence or cellular telephone and two such communicationsealls in each 30-day period other than at a consumer's residence, or cellular telephone for each debt, provided that for purposes of 209 CMR 18.14(1)(d), a creditor may treat any billing address of the consumer as his place of residence;

(e) if the debt collector fails to send the consumer the following notice in writing within 30 days after the first communication to a consumer at his place of employment regarding any debt, provided that a copy of the notice shall be sent every six months thereafter so long as collection activity by the collection agency on the debt continues and the consumer has not made a written request as described in 209 CMR 18.14(1)(c):

#### NOTICE OF IMPORTANT RIGHTS

You have the right to make a written or oral request that telephone calls regarding your debt not be made to you at your place of employment. Any such oral request will be valid for only ten days unless you provide written confirmation of the request postmarked or delivered within seven days of such request. You may terminate this request by writing to the debt collector.

~~YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN~~

~~SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR.~~

(2) Communication with third parties. Except as provided in 209 CMR 18.13, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(3) Ceasing communication. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(a) to advise the consumer that the debt collector's further efforts are being terminated;

(b) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(c) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(4) For the purpose of 209 CMR 18.14, the term “consumer” includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

#### 18.15: Harassment or Abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of 209 CMR 18.15:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The advertisement for sale of any debt to coerce payment of the debt.

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(5) Except as provided in 209 CMR 18.13, the placement of telephone calls without meaningful disclosure of the caller's identity.

(6) Visiting the household of a consumer at times other than the normal waking hours of such consumer, or if normal waking hours are not known, at any time other than between 8:00 A.M. and 9:00 P.M., provided however that in no event shall such visits, initiated by the debt collector, exceed one in any 30-day period for each debt, excluding visits where no person is contacted in the household, unless a consumer consents in writing to more frequent visits, provided, further, that at all times the creditor must remain outside the household unless expressly invited inside by such consumer; and provided further, that visits to the household of a consumer which are solely for the purpose of repossessing any collateral or property of the creditor (including but not limited to credit cards, drafts, notes or the like), are not limited under 209 CMR 18.15(7).

(7) Visiting the place of employment of a consumer, unless requested by the consumer excluding visits which are solely for the purpose of repossessing any collateral or property of the creditor, or confrontations with a consumer regarding the collection of a debt initiated by a debt collector in a public place excluding courthouses, the debt collector's place of business, other places agreed to by a consumer, offices of any attorney for the consumer, or places where the conversation between persons representing the debt collector and a consumer cannot be reasonably overheard by any other person not authorized by the consumer.

#### 18.16: False or Misleading Representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of 209 CMR 18.16:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(a) the character, amount, or legal status of any debt; or

(b) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken.
- (6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—
- (a) lose any claim or defense to payment of the debt; or
  - (b) become subject to any practice prohibited by this title.
- (7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.
- (8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.
- (9) The use of distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.
- (11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.
- (12) The false representation or implication that accounts have been turned over to innocent purchasers for value.
- (13) The false representation or implication that documents are legal process.
- (14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.
- (15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.
- (16) Communicating by telephone without disclosure of the name of the debt collector and without disclosure of the personal name of the individual making such communication provided, however, that any such individual utilizing an alias shall use only one such alias at all times and provided that a mechanism is established by the debt collector to identify the person using such alias; the debt collector shall submit a list of all such aliases and the persons using same to the Commissioner.

(17) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency.

#### 18.17: Unfair Practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of 209 CMR 18.17:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.
- (2) A debt collector shall not publish or cause to be published for general circulation the name of a consumer or any lists of consumers or threaten to do so.
- (3) The request or demand from a consumer of a postdated check, draft, order for withdrawal or other similar instrument in payment for the debt or any portion thereof, or a debt collector to negotiate such instrument before the due date, of the instrument.
- (4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.
- (5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls, ~~and text messaging, and~~ telegram fees. However, 209 CMR 18.17(5) shall not prohibit a debt collector from communicating with a consumer by way of a consumer's ~~cellular~~wireless telephone.
- (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—
  - (a) there is no present right to possession of the property claimed as collateral through an enforceable security interest;
  - (b) there is no present intention to take possession of the property; ~~or~~
  - (c) the property is exempt by law from such dispossession or disablement; or
  - (d) the debt collector knows or has reason to know that demands for payment and/or legal notices were not directed to the consumer's current address.
  - ~~(e) the property is exempt by law from such dispossession or disablement.~~
- (7) Communicating with a consumer regarding a debt by post card.
- (8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

(9) Any representation that an existing obligation of a consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges, if in fact such fees or charges may not legally be added to the existing obligation;

(10) Any solicitation or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been adjudicated bankrupt, without clearly and conspicuously disclosing the nature and consequences of such affirmation;

(11) For a debt collector to report to a consumer reporting agency on its transactions or experiences with a consumer in the debt collector's name. However, a debt collector may, with the express written authorization of the creditor, report to a consumer reporting agency in the creditor's name.

(12) No debt collector shall:

(a) Furnish legal advice or otherwise engage in the practice of law or represent that it is competent to do so, or institute judicial proceedings on behalf of others;

(b) Communicate with consumers in the name of a lawyer or upon stationery of a lawyer, or prepare any forms or instruments which only lawyers are authorized to prepare;

(c) Exercise authority on behalf of a creditor to employ the services of lawyers, unless the creditor has specifically authorized the agency in writing to do so and the agency's course of conduct is at all times consistent with a true relationship of attorney and client between the lawyer and the creditor;

(d) Demand or obtain in any manner a share of the compensation for services performed by a lawyer in collection of a claim;

(13) Failing to disclose the telephone number and office hours of the debt collector on all written communication to the consumer.

(14) Causing expense to any consumer in the form of collect telephone calls, text messaging, download fees, data usage fees, or similar charges, without the express permission of the consumer to communicate in that manner. However, a debt collector may place non-collect telephone calls to the consumer's cellular telephone, or other telephone number provided by the consumer as his/her personal telephone number.

#### 18.18: Validation of Debts

(1) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(a) the amount of the debt;

(b) the name of the creditor to whom the debt is owed;

(c) a statement that unless the consumer, within thirty days after receipt of the notice, disputes that validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(d) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(e) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(2) If the consumer notifies the debt collector in writing within the thirty-day period described in 209 CMR 18.18(1) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(3) A debt collector shall provide to a consumer or any attorney for a consumer within five business days the following:

(a) All papers or copies of papers and electronic records, in the possession of the debt collector which bear the signature of the consumer and which concern the debt being collected;

(b) A ledger, account card, or similar record in the possession of a debt collector, whether paper or electronic, which reflects the date and amount of payments, credits, and charges concerning the debt.

(4) The failure of a consumer to dispute the validity of a debt under 209 CMR 18.18 may not be construed by any court as an admission of liability by the consumer.

#### 18.19: Multiple Debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

#### 18.20: Furnishing Certain Deceptive Forms

It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

#### 18.21: Unfair Servicing Practices - General

A third party loan servicer may not use unfair or unconscionable means in servicing any loan. Without limiting the general application of the foregoing, the following conduct is a violation of 209 CMR 18.21:

- (1) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.
- (2) Knowingly misapplying or recklessly applying payments to escrow accounts.
- (3) Requiring the unnecessary forced placement of insurance, when adequate insurance is currently in place.
- (4) Failing to provide loan payoff information within five business days of a receipt of a written request.
- (5) Charging excessive or unreasonable fees to provide loan payoff information.
- (6) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a consumer's creditworthiness.
- (7) Failing to report both the favorable and unfavorable payment history of the consumer to a nationally recognized consumer credit bureau at least annually if the servicer regularly reports information to a credit bureau.
- ~~(8) Knowingly or recklessly facilitating the illegal repossession of chattel collateral.~~
- (9) Misrepresenting or omitting any material information in connection with the servicing of the loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a loan, the terms and conditions of the servicing agreement or the borrower's obligations under the loan.
- (10) Failing to maintain procedures to ensure accuracy and timely updating of borrower's account information, including posting of payments and imposition of fees.
- (11) Requiring funds to be remitted by means more costly to the consumer than a bank or certified check or attorney's check from an attorney's account.
- (12) Refusing to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided that the third party servicer may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower.
- (13) Failing to adequately monitor and oversee law firms, subservicers, foreclosure firms, foreclosure trustees and other third party providers, agents or affiliates retained by or on behalf of the third party loan servicer to ensure that such third parties are complying with the pertinent state and federal laws and regulations governing third party loan servicers, including but not limited to the provisions of 209 CMR 18.00 et seq.

18.21A: Mortgage Loan Servicing Practices

(1) A third party loan servicer may not use unfair or unconscionable means in servicing any mortgage loan. Without limiting the general application of the foregoing, the following conduct is a violation of 209 CMR 18.21A:

(a) Failing to promptly accept and apply all borrower payments, including non-conforming payments, cure payments (where authorized by law or contract), and trial modification payments.

(b) Failing to comply with the provisions of M.G.L. chapter 183, section 54D regarding providing loan payoff information to a consumer.

(c)(8) Collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.

(d) Failing to comply with the provisions of M.G.L. chapter 244, section 35A, 35B or 35C -regarding the right to cure a mortgage loan default and other requirements.-

(e)(9) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.-

(2) Loss mitigation procedures.

(a) A third party loan servicer shall, subject to the third party loan servicer's duties and obligations under the mortgage servicing contract, if any, evaluate borrowers for all available loss mitigation options prior to foreclosure, communicate such options to the borrower, and attempt a resolution or workout of the delinquency, including a loan modification. Notwithstanding any language to the contrary, nothing in this paragraph shall be construed to require a third party loan servicer to perform services in a manner inconsistent with the terms of the note, mortgage or contract for the servicing of a mortgage loan.

(b) A third party loan servicer shall provide to a borrower written acknowledgment of documentation submitted by the borrower in connection with a loan modification application within three (3) business days of receipt thereof. In the written acknowledgment, the third party loan servicer shall also include a list of any additional documents required and shall identify deadlines for submission of such documents.

(c) A third party loan servicer shall not refer or initiate foreclosure proceedings while a good faith government sponsored mortgage loan modification program or proprietary trial modification evaluation is in process or the borrower's application for any loss mitigation program is pending. A third party loan servicer shall not

initiate foreclosure proceedings until the borrower has received written denial of all applicable loss mitigation programs and all applicable appeal periods have expired.

(d) A third party loan servicer shall provide borrowers with contact information for a designated employee(s) with primary responsibility to handle all loss mitigation communications with such borrower. The contact information shall include toll free telephone number(s) for direct communication with a loss mitigation staff person(s), fax number(s) for receipt of documents, and e-mail address(es).

(e) Nothing in this section shall be construed to prevent a third party loan servicer from offering or accepting alternative loss mitigation options, including other modification programs offered by the third party loan servicer, a short sale, a deed-in-lieu of foreclosure or forbearance, if the borrower requests such an alternative, is not eligible for or does not qualify for a loan modification under a government sponsored mortgage loan modification program or proprietary modification program, or rejects the third party loan servicer's loss mitigation proposal.

(3)Information and documentation provided by third party loan servicers in the context of foreclosure proceedings

(a) A third party loan servicer shall ensure that all foreclosure affidavits or sworn statements are based on personal knowledge.

(b) A third party loan servicer shall ensure that foreclosure affidavits or sworn statements shall set forth a detailed description of the basis of affiant's claimed personal knowledge of information contained in the affidavit or sworn statement, including sources of all information recited and a statement as to why the sources are accurate and reliable.

(c) A third party loan servicer shall certify in writing the basis for asserting that the foreclosing party has the right to foreclose, including but not limited to, certification of the chain of title and ownership of the note and mortgage from the date of the recording of the mortgage being foreclosed upon. The third party loan servicer shall provide such certification to the borrower with the notice of foreclosure, and shall also include a copy of the note with all required endorsements.

(d) A third party loan servicer shall comply with all applicable state and federal laws governing the rights of tenants living in foreclosed residential properties.

#### 18.22: Relation to Other Laws

209 CMR 18.00 does not exempt any person from complying with existing laws or canons of ethics with respect to debt collection practices. To the extent that any provision of 209 CMR 18.00 is specifically inconsistent with the *Canons of Ethics and Disciplinary Rules Regulating the Practice of Law in Massachusetts*, and then only to the extent of the inconsistency, 209 CMR 18.00 is not applicable.

#### 18.23: Preemption By Federal Law

In the event any conflict exists between the provisions of 209 CMR 18.00 and the provisions of ~~f~~Federal statutes or regulations relating to the collection of debts or third party loan servicing, such ~~f~~Federal law shall control but only to the extent that such ~~f~~Federal law mandates actions or procedures prohibited by 209 CMR 18.00.

#### 18.24: Effective Date

(1) Any person licensed as a collection agency as of February 24, 2004 shall be considered licensed as a debt collector until September 30, 2004.

(2) Any person who meets the definition of a third party loan servicer and is not otherwise licensed as a collection agency as of February 24, 2004, must register with the Commissioner no later than September 30, 2004.

#### REGULATORY AUTHORITY

209 CMR 18.00: M.G.L. c. 93, § 24A.