

A debt collector is attempting to collect a real old debt, what can I do?

4 April 2012

If you live in Massachusetts, the Attorney General has strengthened protection of Massachusetts consumers with new state regulations for debt collection which may help.

The Massachusetts legislature gives the Attorney General the power to propose and issue regulations governing the collection of debts. The citation of the regulations is 940 CMR 7.00 et seq. and the enabling statute is Mass. Gen. Laws ch. 93A § 2(c). In 2011 the Attorney General proposed changes to the existing regulations for debt collection in Massachusetts and the regulations were indeed revised to the benefit of Massachusetts consumers. There are a number of changes, some notable, one of the most significant concerns the collection of time-barred debt.

The regulations added the requirement for debt collectors to make a disclosure when attempting to collect a time-barred debt. Debt is considered time-barred if a legal claim were brought to collect the debt it would be unenforceable because the statute of limitations has expired. A statute of limitations is a law that limits the amount of time a person can bring a legal claim for something. There are statutes of limitations for many types of civil claims. Statute of limitations bring some certainty to life to allow society to know at some point what is done is done.

Specifically, the new regulation adopted makes the attempt to collect time-barred debt an unfair business practice unless a certain, specific disclosure is made. This applies when the communication with the consumer is in writing or is oral. The disclosure states in part "THIS DEBT MAY BE TOO OLD FOR YOU TO BE SUED ON IT IN COURT." In writing, the disclosure must be made on the first page of any letter. When the communication is oral, the disclosure must be made immediately before or after the first request for payment, or if no request is made, no later than immediately after reference to the debt is made.

Massachusetts is not the first state to raise this type of requirement, but apparently is part of a trend in the law to clamp down on the collection of time-barred debt. While not completely outlawing the practice, this new regulation sure puts a crimp into trying to do it. But even if the disclosure is made and Massachusetts law is complied with, there is some legal authority interpreting the Fair Debt Collection Practices Act, a federal law, which deems the collection of time-barred debt to be a violation of federal law.

So, if a debt collector has attempted to collect a debt that you think may have been time barred, there is more than Massachusetts law that applies; and you may want to give us a call to see if we can help.

Contact: George E. Bourguignon, Jr.

Phone: (508) 769-1359 or (413) 746-8008

Website: www.bourguignonlaw.com

Email: gbourguignon@bourguignonlaw.com

Law on Collection of real old debt laws/statute of limitations for collecting debt/Massachusetts debt collection abuse/regulations of debt collection in Massachusetts