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MA Attorney General's "Unfair and Deceptive Fee" Regulations Impact Real Estate

By Adam Zaiger

Following the adoption of similar regulations in California, Minnesota and Virginia, the Massachusetts Attorney General's "Unfair and Deceptive Fee" Regulations (940 CMR 38.00) became effective in late 2025. Other similar regulations are scheduled to come into effect in Colorado and Connecticut in 2026. Here we look at the Massachusetts regulations and their potential, but not yet tested, impacts upon residential and multifamily real estate leasing practice. While the Massachusetts regulations were aimed at what are commonly referred to as "junk fees"— typically referring to items of which a consumer may be unaware due to unscrupulous marketing practices, fine print, and byzantine cancellation policies – the broad scope of the regulations in fact goes much further. Read plainly, the Massachusetts regulations appear to cover a wide variety of goods and services tied to any "personal, family, or household use." The regulations specifically state that such goods and services may include "memberships, subscriptions, and dwelling units available for rent or lease" and no thresholds or real estate exemptions are cited.[1]

The wide reach of 940 CMR 38.00 has been affirmed by the Massachusetts Attorney General. The official guidance indeed confirms that the regulations cover, among other things, all residential dwelling and apartment leases.[2] As a result, it appears, the initial advertisement of a rental listing, if it specifies a price, must advertise the total price, inclusive of all fees, to be paid monthly by the tenant. Failure by a lessor to make the proper disclosure could render the disputed charges uncollectible and potentially invalidate the lease itself.

The complexity and potential impact of the regulations go well beyond price advertising. For example, the AG guidance also specifically states that residential leases containing any auto-renewal (i.e., "negative option") feature are subject to these new rules. For any clause where a renter's silence or failure to take affirmative action to cancel the lease would be interpreted by the lessor as a continuing acceptance of a month-to-month or defined-term rental, or a rental for a defined term that converts to month-to-month upon conclusion, the lessor must now provide the renter with (i) the reminder notices required by 940 CMR 38.05(4)-(6), depending on the duration of the lease (which notice will often be 5-30 days prior to the auto-renewal deadline), and (ii) an easily-effectuated and fully-disclosed termination mechanism. It may turn out that 940 CMR 38.05 will upend longstanding auto-renewal practice in Massachusetts and require implementation of new leasing forms, notices, rental applications, and pricing disclosures listing any potential "hidden fees," such as utility charges, lockout fees, fines for misuse of sanitary facilities, and other common infractions, after-hours service calls, and the like. Then, once a lease has been executed, any required consumer notice deadlines for an auto-renewal provision would need to be tracked to avoid a failure by the lessor to timely deliver the required notice.

The stakes are high for these new regulations, it appears. Any non-compliance is deemed an unfair and deceptive trade practice under Massachusetts General Law, Chapter 93A, potentially subjecting the lessor and its agents to imposition of treble damages and attorney's fees. The threat of these penalties, in some cases, could impede efforts to effectuate or settle what might otherwise be a valid and meritorious eviction proceeding or unrelated leasing dispute. We continue to track these issues as the regulations and the official guidance to date have yet to be interpreted or further clarified with respect to their impact on residential real estate.

1. The link to the: full text of the new regulation. ⌧

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2. The link to the: full text of the MA Attorney General guidance. ⌧

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