



March 31, 2020

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VIA EMAIL [ago@state.ma.us](mailto:ago@state.ma.us)  
FACSIMILE (617) 727-3251 AND  
FIRST CLASS MAIL

The Honorable Maura Healey  
*Attorney General of the Commonwealth of Massachusetts*  
Office of the Attorney General  
1 Ashburton Place, 20<sup>th</sup> Floor  
Boston, MA 02108

Re: Request for Amendment to the Emergency Regulation - 940 CMR 35:00 Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID-19 – To Further Exclude Condominium Associations From Enforcement

Dear Attorney General Healey:

We write on behalf of the Real Estate Bar Association for Massachusetts (“REBA”), an organization representing over 2,500 lawyers practicing in all areas of real estate law. REBA respectfully request that you amend the Emergency Regulation, 940 CMR 35:00 Unfair and Deceptive Debt Collection Practices During the State of Emergency Caused by COVID, issued on March 27, 2020 (“Regulation”), to clarify that in addition to mortgage lenders and landlords, the Regulation shall also not apply to condominium associations established pursuant to G.L. c. 183A, § 1 *et seq.* in the Commonwealth.

Massachusetts condominium associations are nonprofit organizations which require the payment, and the ability to collect, common area fees in order to maintain and provide for the essential operations of the shared areas of a condominium. Such fees are utilized for the payment of property and liability insurance, utilities, maintenance and repair of the common areas, property management services, condominium employees, wastewater treatment, accounting and legal services, taxes, and other essential services depending on the size and type of condominium.

In order to assure that common area fees are paid, and that condominium associations and their residents are protected, the law of the Commonwealth with regard to the collection of common area fees stands as one of the strongest, if not the strongest, in the country. In Massachusetts, a condominium association is empowered under G.L. c. 183A, § 6 to institute a civil action against, inter alia, a unit owner to enforce its lien for unpaid monthly common expense assessments. The unit owner’s obligation to pay his or her share of the condominium’s common expenses is not subject to offset, withholding, or defense. The fees must be paid in a timely manner, and the unit owner is bound to pay the fees before challenging them.

The monthly collection of condominium fees is the life blood of a condominium association, similar to what real estate taxes are to a municipality,<sup>1</sup> and without the monthly payments of the common area fees, a condominium association will be unable to provide for the essential operations of the common areas and facilities at the condominium.

In the downturned real estate market of the late 1980s and early 1990s, the amount of the first mortgage commonly equaled or exceeded the value of the unit. Since the condominium's lien stood behind the first mortgage in priority, the lien was effectively meaningless. G.L. c. 183A, § 6(c) was amended allowing for a condominium association's lien to be up to six months of regular common area fees plus collection costs and allowing such lien priority over the first mortgage, provided that the requirements of the Statute were satisfied. In order to perfect its priority relative to a first mortgagee the association must institute a lawsuit. Without this legislation, condominium associations would most likely not have survived the failing real estate market of the late 80s and early 90s, and most certainly would not have survived the economic crisis that commenced in 2008. If during the ninety (90) days following the effective date of the Regulation, or until the State of Emergency Period established in the Regulation expires, condominium associations are not permitted to position themselves to preserve the priority of their lien relative to the banks by filing a lawsuit, the exemption of the banks from the Regulation will result in the extinguishment of every existing condominium lien in any and all foreclosures of a first mortgage in the Commonwealth.

In order for condominium associations to survive the current COVID-19 pandemic, the above-referenced legislation, which was created to protect Massachusetts condominium associations and the approximately 1.6 million unit owners who own and/or reside in them, must not be restricted by the Regulation. Condominium associations must be permitted to receive the monthly fees associated with maintaining the common area properties which they are responsible for, and to assist the owners of such properties in maintaining their essential housing and necessary operations.

REBA is hopeful that the inclusion of condominium associations in the prohibitions contained in Section 35:03(2) of the Regulation was merely an understandable oversight, and that based on the above, you will amend the Regulation to include the enforcement of a condominium association's lien for unpaid common expense assessments among the exclusion to the Regulation's coverage.

Specifically, REBA respectfully request that the following red-lined text be added to the end of Section 35.03(2) of the Regulation:

Paragraph (1)(a) through (g), inclusive, of this Section shall not apply to any attempt to collect a debt which is, or is alleged to be, owing as a result of a loan secured by a mortgage on real property, or to any attempt to collect a debt that is, or is alleged to be, owing by a tenant to an owner, as those terms are defined by 940 CMR 3:01, **or to any attempt to enforce a lien for unpaid condominium common expense assessments pursuant to G.L. c. 183A § 1, et seq.**

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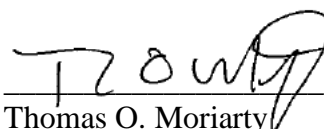
<sup>1</sup> See *Blood v. Edgar*, 36 Mass.App.Ct. 402, 405 (1994); See also *Trustees of the Prince Condominium Trust v. Prosser*, 412 Mass. 723 (1992).

REBA is aware of the position taken by the Community Associations Institute, New England Chapter, and the analysis set forth in that letter email sent to you dated March 27, 2020, and adopts and endorses the factual and legal arguments set forth therein.

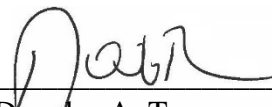
If you or your staff require further information, please contact our legislative counsel, Edward J. Smith, at (978) 590-5308 or at [ejsmithrelaw.com](mailto:ejsmithrelaw.com).

Thank you for your consideration of our comments.

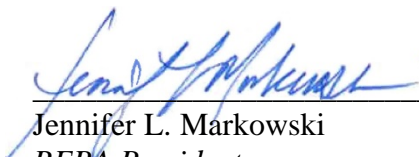
Sincerely,



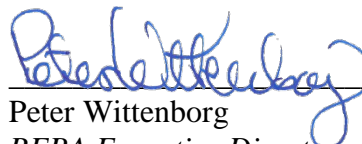
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