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Regulator Panel

Antonio P. “Tony” Salazar
Maryland Commissioner of
Financial Regulation

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Overview of the Office of the Commissioner of Financial Regulation



- ❑ Mission. The Commissioner's Office is tasked with ensuring that Maryland residents are able to conduct their financial transactions through institutions that comply with Maryland's consumer protection laws. Simultaneously, the Office encourages a flexible and sound regulatory environment that promotes fair competition and supports Maryland's economy.
- ❑ Structure. Supervises all depository and non-depository financial entities in the State of Maryland. The Office manages and provides operational support for the Maryland State Collection Agency Licensing Board which licenses debt collectors.

Overview of Maryland Collection Agency Licensing Act



Md. Code (1992, 2015 Rep. Vol.), Bus. Reg. ("BR") § 7-301, *et seq*

- ❑ Enacted in 1977 to protect Maryland consumers from abusive debt collection practices then commonly employed by the collection agency industry.
- ❑ Established State Collection Agency Licensing Board which licenses debt collectors – **(Licensing can include attorneys and law firms)**
(<https://www.dlrr.state.md.us/finance/collagboard.shtml>); See also, (<https://www.emaze.com/@A00ZORFZR/debt-laws-ocfr-copy1>)
- ❑ The Board also enforces the Maryland Consumer Debt Collection Act ("MCDCA").
Md. Code (1975, 2013 Repl. Vol.), Com. Law ("CL") § 14-201, *et seq*.
- ❑ Attorneys **may be** exempt from licensing, **unless** they have an employee who:
(i) is **not a lawyer**; and (ii) is **engaged primarily to solicit debts for collection or primarily makes contact with a debtor to collect or adjust a debt through a procedure identified with the operation of a collection agency (e.g. many paralegals/secretaries)**.

Overview of Maryland Collection Agency Licensing Act, Cont.



- ❑ MCALA has broad reach. Act reaches “collection agencies.”
- ❑ Collection Agencies include those who are engaged DIRECTLY OR INDIRECTLY in the business of collecting consumer claims for others OR collecting their own claim if the claim was in default when it was acquired.
- ❑ Consumer Claim is a claim for money owed by a Maryland resident that arises “from a transaction in which, for a family, household, or personal purpose, the resident received credit, money, personal property or services.” (Not so straightforward - e.g., student loans are deemed consumer claims but in some Circuits – graduate loans are deemed commercial purpose).
- ❑ Complaint Driven Process. Board reacts to consumer complaints.
- ❑ Violations can result in civil and criminal penalties, restitution orders, and enforcement action by Maryland Attorney General Office of Consumer Protection pursuant to the Maryland Consumer Protection Act.

Attempts to Broad the Scope of the Maryland Collection Agency Licensing Act



❑ Examples of attempted or actual expansion.

(i) Title Insurance company. A MCALA claim was raised when a title company was pursuing a subrogation claim. Old Republic Ins. Co. v. Gordon, 228 Md. App. 1, 137 A.3d 327 (2016).

(ii) Mortgage Holding REITS (statutory trusts). Various cases have been brought against mortgage holding REITS either directly or as defenses to foreclosure actions. Sharma/Marvastian decision issued by Court of Special Appeals on August 5, 2018 holding that MCALA not intended to reach Mortgage holding trusts.

(iii) Property Managers (condo). They have been subjected to various actions and generally deemed NOT covered by the MCALA. Coverage in particular situations is fact dependent. FTC some years back issued guidance providing that condo property managers “probably not” covered under FDCPA (very similar to MCALA).

(iv) Rental Agents/Property Managers. Same analysis as Property Managers.

Trends



- ❑ Reporting of business debt (typically guarantees) to consumer credit reporting agencies.
- ❑ Fair Debt Collection Act Extension - The Bipartisan Policy Center's Task Force on Main Street Finance recently recommended that Congress should amend the Fair Debt Collection Practices Act to apply to debts incurred by small businesses with less than \$500,000 in annual revenue.



Other Considerations and Suggestions

- ❑ Neither MCALA nor FDCPA contain loser-pay provisions. It is very costly to defend consumer complaints through trial and possible appeal.
- ❑ Get MCALA and FDCPA compliant.
- ❑ Self analysis – make a checklist of facts and requirements and create appropriate procedures to identify potential pitfalls.
- ❑ Obtain a license. The process is neither complicated nor costly.