



New Massachusetts Business Rule Continues Recent Regulation of Rental Price Disclosures

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A rule governing Unfair and Deceptive Fees (940 CMR 38.00) published March 3 by the Massachusetts Attorney General sets new Total Price disclosure obligations in marketing and sales for a wide set of covered businesses, including rental housing providers.

Specifically, the final Rule:

- requires the disclosure of a Total Price for goods and services, including rental leases, encompassing mandatory and optional or waivable fees;
- generally prohibits the collection of personal information before providing the Total Price; and
- requires additional disclosures with trial offers (e.g., rent concessions) and negative option features (e.g., automatic renewal).

Applicable to both operators' leases and services as well as vendor agreements, the Rule takes effect on September 2, 2025, and governs the "Advertising or marketing, solicitation, or offer of Sale that is Targeted To or results in a Sale [including a lease] in, Massachusetts."

Proposed in November 2023, the final Rule's release follows the Federal Trade Commission's "junk fee" and "click-to-cancel" rules, bipartisan federal-state enforcement activities directed at rental housing advertising and leasing disclosures, New York City's FARE Act rent/fee disclosure mandates, and the introduction of rent/fee disclosure legislation in (to date) Arizona, California, Colorado, Georgia, Illinois, and New York.

The rule enumerates several new disclosure obligations, noncompliance with which is an unfair or deceptive act of practice under Massachusetts law:

Total Price and Mandatory/Optional/Waivable Fees

In marketing activities, at the "initial presentation" of the product price and at the "final presentation" of the price before the Sale, the Total Price must be presented together with any optional or waivable fees, the nature, purpose, and amount of mandatory or optional/waivable fees, and "readily available instructions" describing how to avoid the optional/waivable fees. (The Total Price is the maximum price a consumer must pay for a Product, inclusive of all fees, charges, or other expenses, including any mandatory ancillary products). In between initial and final presentations, the Total Price is to be disclosed.

In leasing flows, before requiring that a consumer provide any personal or billing information, the Total Price must be disclosed, subject to four specific exceptions. Consumer information may be collected specifically, and only to the extent necessary, to (1) facilitate underwriting in connection with the sale of the product, (2) determine the Product's availability, (3) determine whether the Sale of such Product to the consumer is legal, or (4) compute an aspect of pricing by a method approved by certain Commonwealth regulators.

As expected, in the rental housing context, the Total Price can be described as a monthly price, where disclosed with the lease duration.

Trial Offers and Negative Option Features

The Rule's new coverage of trial offers and negative option features suggests a review of lease concession and renewal practices and vendor offer practices would be worthwhile. The broad definition of trial offers appears to extend to rent concessions. Specific disclosures must be made clearly and conspicuously with trial offers, including cancellation dates and instructions. Negative option features, such as product and lease renewals that occur without consumer action, must be presented with a simple mechanism to cancel and a pre-renewal notification describing the upcoming renewal date and cancellation process.

Meeting Compliance, Investor, and Consumer Expectations

So what about implementation? Savvy rental housing providers have been reviewing marketing and leasing flows for several months following the Commonwealth's rule proposal and the Federal Trade Commission's subsequent "junk fee" rulemaking and enforcement activity.

Experienced counsel can help support initial compliance review and continued monitoring of new jurisdictional standards and peer practices – keys to managing compliance and meeting consumer and investor expectations. Ongoing communication among vendors, software providers, marketing agents, and operators over current and future state disclosure capabilities is also essential.

Hudson Cook LLP has worked with property operators and vendors to assess and adapt marketing and leasing flows in this dynamic regulatory arena to new rules, technology capabilities, and peer practices. Here are a few key areas to include in reviews of portfolio marketing and leasing flows:

Property Websites and Third-Party Advertising

- Accuracy and completeness of descriptions of mandatory and optional fees
- Property-level vs. transactional Total Price Disclosures
- Addition of updated APIs, as available, for complex situational, risk-adjusted, or periodic fees
- Review of Third-Party Advertising for Total Price Disclosure methods and execution Leasing Flows
- Accuracy and completeness of descriptions of mandatory and optional fees
- Timing and format of fee disclosures (before applying, with lease)
- Trial offers and negative option features in leases and vendor product enrollment

