

TAKING ACTION: THE CONSUMER PROTECTION LAW

Massachusetts, like many other states, has a statute that specifically enables the Attorney General and consumers to take legal action against unfair or deceptive conduct in the marketplace. The statute, Massachusetts General Law chapter 93A, is referred to as the Consumer Protection Act. The law provides for actions by the Attorney General, or by individuals.

The Attorney General can investigate and take action against businesses that engage in unfair or deceptive conduct, and prosecute a consumer protection case in the public interest. Because the Attorney General does not have the resources to prosecute every consumer protection violation, the law also provides for private lawsuits.

Consumers may sue businesses that may have engaged in unfair or deceptive acts or practices against them. For claims of actual damages under \$2,000, a consumer may file a legal action in the Small Claims session of the District Court, Boston Municipal Court, or if the claim involves housing issues, in the housing court Small Claims session. The Small Claims session is somewhat less formal than the procedures in other courts, has a far lower filing fee, and for these and other reasons, a consumer may choose to go forward in Small Claims without the assistance of an attorney.

In order to bring any c. 93A action, however, a consumer must begin by sending the business a c. 93A “demand letter,” to which the business has 30 days to respond. This demand letter is not required if a consumer is making a counterclaim in a lawsuit filed by the business against the consumer, or if the business does not maintain a place of business or keep assets in Massachusetts.

The purpose of the demand letter is threefold. First, it puts a business on notice of a consumer’s claim, and provides information about the nature of the claim. Second, it may encourage the business to negotiate, to settle the matter without the necessity of going to court. Finally, it acts as a control on the amount of money damages that the consumer may ultimately recover if the claim is proven in court.

The demand letter must:

- ◆ Be sent at least 30 days prior to the filing of any court action. It is a good idea to send two copies of the letter to the party you are claiming against, one by certified or registered mail, so that you have a record it was sent, and one by regular mail, in case the business refuses the certified or registered mail. Remember to keep a copy of the letter you send, and keep the receipts and forms you get from the post office if you send the letter by certified or registered mail. These will be helpful if you do need to file in court.
- ◆ Identify you (the claimant). You can do this by including your full name and residential address on the letter.
- ◆ Reasonably describe the unfair or deceptive act or practice at issue. You can do this by

providing a brief factual account of what happened, including dates upon which events occurred. You may, but need not, refer to particular laws you believe were violated when describing the unfair or deceptive acts or practices.

- ◆ Identify the injury suffered. You can do this by describing the money or property lost as a result of the unfair act. You will want to find out what it will cost to remedy the unfair or deceptive act or practice, too, to help the court determine your actual damages.

Sample Demand Letter

Your Street Name and Number, (Apartment #)
Your City and State, Zip Code
Month, Day, Year

Owner or President of Business
Name of Business
Street Address
Town, State, Zip Code

Dear Mr./Ms. Businessperson:

I am writing to you under the provisions of Massachusetts General Laws, Chapter 93A, Section 9, the Consumer Protection Act. I am writing to request relief as outlined in that statute.

On or about (date), the following unfair or deceptive act(s) or practice(s) occurred:

Describe the events as they occurred, including the conduct and time they happened. You may have more than one paragraph here, if you believe that there was more than one unfair or deceptive act that occurred at one time, or if there were multiple times that you were subjected to unfair or deceptive acts or practices.

I believe that the(se) acts or practices are declared unlawful by Section 2 of Chapter 93A, which declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce unlawful. *If you are aware of the violation of a specific law or regulation, you will wish to quote the text of that law or regulation here, by saying that you believe the conduct is a violation of [regulation or law number], which provides: then quote the text you believe applies.*

I have suffered injury or loss of money or property (in the amount of), (or, as follows:) *Describe why you have been injured in this amount; if you have given the business an opportunity to fix poor repairs, for example, and they have not done so, put that information here.*

This letter serves as my request for the following relief: (relief or amount of damages you seek). Under the provisions of Section 9 Chapter 93A, I am providing you with the opportunity to make a written offer of settlement of this claim within 30 days. If you fail to make a good faith offer of settlement in response to this request, and I institute legal action, a court may award

me double or triple damages, attorney's fees and costs if the court finds in my favor.

I may be reached at the address written above, or at (phone number) between the hours of: (). I look forward to hearing from you.

Sincerely,

(Signature)

Your Name (printed or typed)