

How do I prepare a demand letter pursuant to Mass. Gen. Laws chapter 93A?

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There are many requirements to a demand letter (and we will touch on only one of them in this post). The point to keep in mind is that it is not just a letter, it is a unique, special letter that if done properly triggers the obligations and protections afforded by the Massachusetts Consumer Protection Act.

For the (consumer) sender, it is a prerequisite to making a claim of a violation under the Act. It is usually referred to as an unfair and deceptive business practice claim under Massachusetts law, which would entitle the sender/plaintiff double or treble damages, plus attorney's fees and costs. The plaintiff must win at trial and then the judge decides whether the wrongful act or practice was a knowing violation of the act or the tender of settlement was made in bad faith with knowledge the act or practice was a violation. Mass. Gen. Laws. c. 93A §9(3).

For the recipient, it means the clock is ticking on the opportunity to send a response (30 days from date sent, not received), a reasonable tender of settlement, to limit the damages possible if the court finds the tender was reasonable at the time in relation to the sender's/plaintiff's injuries/damages.

What makes this exchange so important is that if there is a trial, you can expect that there will be an argument over whether the letter was sufficient under the law, and if there was a response, whether it was sufficient under the law.

As stated, there are many requirements to a demand letter under Mass. Gen. Laws c. 93A, a very important one is that the letter must "define the injury suffered and the relief demanded in a manner that provides the prospective defendant with an opportunity to review the facts and the law involved to see if the requested relief should be granted or denied and enables him to make a reasonable tender of settlement." Simas v. House of Cabinets, Inc., 53 Mass. App. Ct. 131, 139 (2001). This should be the heart of a demand letter. Keep this in mind when drafting the letter. It is helpful to review your letter when done from the perspective of the recipient and if enough info is provided to enable an evaluation of the claims. A cursory description may not be enough. Thorpe v. Mutual of Omaha Ins. Co., 984 F.2d 541 (1st Cir 1993).

The author sends and replies to demand letters under Mass. Gen. Laws c. 93A regularly and it is common to see insufficient letters sent, many by lawyers. The author believes this is the case because there is more to the subject than many lawyers think and the subject matter changes as well. (It is significant enough to be on the Massachusetts bar exam.). There are many court rulings on the sufficiency of a

demand letter (and response) and unless they are reviewed, one of the requirements may catch you.

If you are preparing a demand or a response for the first time, you have to think if many attorney's do not get it right, will you? The author suggests considering engaging an attorney familiar with the body of case law on the sufficiency of a demand letter and responses to same before undertaking the endeavor.

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