

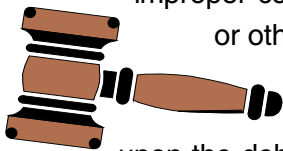
Collecting Association Assessments: Trap & Danger for the Uninformed Association Manager and Attorney

Associations, managers, accountants and attorneys must now exercise great care in their efforts to collect assessments or other charges. Mistakes can and will impose significant fines and penalties on managers, accountants, attorneys, or others acting for associations. A recent case, decided by the Seventh Circuit Court of Appeals, has created significant potential for liability to managers, accountants, attorneys and others if they do not proceed very carefully in collecting assessments.

**ASSESSMENTS
ARE
DEBTS**

Illinois has been at the forefront of the law in assisting associations to collect unpaid assessments. In Illinois an association can pursue possession of a unit owner's unit for failure to pay assessments. A unit owner can actually be evicted if the court determines that their assessments have not been paid when due. The law provides that attorneys fees and costs as determined by the court, can be recovered. This type of suit can be used instead filing a lien and foreclosing, or suing for the unpaid assessments. The law now lets non-condominium associations evict for failing to pay assessments.

The Fair Debt Collection Practices Act (the "FDCPA" or "Act"), 15 U.S.C. § 1692 et seq. was passed some years ago. This Act was initially created in order to curb abuses by collection agencies. The Act imposes obligations on parties who attempt to collect money through the use of any written or verbal communication with a debtor. Any failure to comply with the Act, any improper communication, any communication that does not carry the proper notices or other requirements, can be considered a violation of the FDCPA.



If a violation of the FDCPA occurs significant penalties can be imposed upon the debt collector. Violations of the Act by the debt collector may cause it to be unable to collect the amounts due and owing and may also cause other fines and penalties to be imposed, including payment of the attorneys fees incurred by the debtor. A few years ago the Act was extended and applied to attorneys and others who may collect debts.

Until recently, in Illinois and nationwide, association assessments have not been considered debts under the Act. The collection of assessments did not require compliance with the FDCPA requirements. Assessments were not subject to the penalties and sanctions of the FDCPA. That has now changed at least in the Northern District of Illinois and in all areas within the Seventh Circuit Court of Appeals.

Two cases have been recently decided by the Court of Appeals for the Seventh Circuit. The cases are Newman v. Boehm Pearlstein and Bright, Limited and Ritter v. Moss & Bloomberg, Limited. In each case an attorney, acting on behalf of the condominium association, sent a letter to the unit owners identifying assessments which were past due and owing. In one case the letter was a thirty day notice and demand which stated that an eviction action would be initiated if the amounts were not paid in thirty days. In the other case the letter required payment by certified check within ten days, or a letter disputing the amount due or a thirty day notice and demand letter would then be sent. In both cases the unit owners, through attorneys, filed suits alleging that the defendant law firms had failed to comply with the requirements of the FDCPA. They claimed that the defendants had violated the FDCPA by failing to include in their collection letters the validation notice required by a particular portion of the FDCPA. They also claimed that the letters did not expressly disclose that the defendants were attempting to collect a debt and that any information obtained would be used for that purpose.

**FAIR
DEBT
COLLECTION
PRACTICES
ACT**

**APPLIES TO
ASSOCIATIONS**

The Federal Trial Court hearing the Ritter case dismissed (ended) the Ritters lawsuit on the basis that the past due assessments referenced in the collection letter did not qualify as a debt under the Act. The Newman's case was also dismissed (ended) on the same basis. The dismissal of both suits were appealed. The Seventh Circuit Court of Appeals reviewed the case and issued a written opinion on July 2, 1997. In that opinion the court first discarded some past theories regarding the application of the FDCPA. It then specifically found that the assessments qualified as obligations of a consumer to pay money arising out of a transaction. The court also found that the assessments have a personal, family or household purpose so that they qualify as debts under the FDCPA. Basically the court said the collection of assessments is subject to and governed by the FDCPA. Because they qualify as debts under the FDCPA the federal district court has jurisdiction (the right) to determine whether or not the notices that were sent on behalf of the associations violate the FDCPA. Thus, the court has jurisdiction to determine whether managers, accountants, attorneys or others in attempts to collect assessments have failed to comply with the obligations imposed by the FDCPA.

As a result of the two cases identified managers, accountants, attorneys and any third party must comply in all respects with the FDCPA in collecting association assessments. They must comply in any and all communications to owners. They must comply if the request is for payment of past due assessments or if it is a demand for possession which initiates an eviction or if it is a lien. They must comply even if it is a letter from a manager identifying a delinquency.

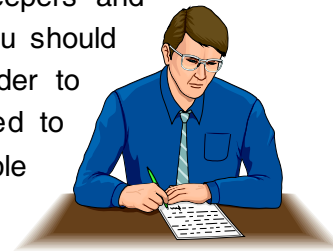
THE LAW DOES HAVE AN EXCEPTION. Any entity that is owed money, may communicate directly with the debtor without complying with the Act. Thus, the association can write directly to the unit owner and demand payment or threaten eviction without complying with the requirements of the FDCPA. However, if there is any third party that is involved even if the third party writes the letter for the association to sign, then there must be compliance with the FDCPA in all respects or there is a potential for serious liability, penalties and attorneys fees.

Even if an association is exempt and need not comply, good practice would suggest that the association adopt and strictly follow the procedures set forth in the FDCPA. In doing so, the association should avoid any challenges. Further, following the procedure set forth in the FDCPA may also educate the association and any other entity including managers, accountants or attorneys, performing work on behalf of the association so that they recognize the requirements of the Act and comply with the requirements when taking any actions on behalf of the association.



It is important to remember that the requirements are significant and absolute. In all communications, written or verbal, it is mandatory that the **"debt collector" disclose and identify that the association and their agents are attempting to collect a debt and that any and all information obtained will be used for that purpose.** It is also necessary in the first letter to comply with §1692(g) of the Act by including a validation notice required by this section. Attorneys generally dealing with collections including the firm of DICKLER, KAHN, SLOWIKOWSKI & ZAVELL, LTD. are aware of the Act requirements and the specific wording that must be provided in writing and verbally in order to satisfy the FDCPA requirements. Similarly validation statements are now required in papers filed with the court and in any other communications to the unit owner debtors.

The validation notices and the warning notice regarding attempting to collect a debt are two requirements imposed by the Act. There are a number of other specific requirements. All must be complied with by management, accountants, bookkeepers and attorneys, or any others. Accordingly, you are advised that you should consult with an attorney knowledgeable in the FDCPA in order to understand and comply with all the requirements. You are urged to utilize the services of a law firm and attorney that is knowledgeable in the requirements of the FDCPA. You are urged to require your attorneys to comply strictly with the FDCPA requirements. You are urged to have your accountants, bookkeepers, and management companies comply with the requirements of the FDCPA in all notices or demands for late assessments or other amounts due to the association, and in all communications with others. If management finds



this process too burdensome, complicated or creates too great a risk then you are urged to refer them to your counsel for direction, and to refer collections on all past due accounts to this firm for processing. Again, however, be sure that all parties that deal with late assessments due to an association, comply with the requirements of the FDCPA.

PENALTIES FOR VIOLATION OF THE ACT ARE SIGNIFICANT

The penalty for a violation is up to \$1,000.00 for each separate violation, plus attorneys fees. If a court finds that a class exists, and there is a class action, the court can impose a penalty of the lesser of 1% of the total value of the organization or \$500,000.00, plus attorneys fees. Avoid the possibility of these penalties. Comply with all requirements of the FDCPA.



A GENERAL PRACTICE LAW FIRM CONCENTRATING IN **CONDOMINIUM & HOMEOWNERS ASSOCIATION LAW** INCLUDING:

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- Rules Preparation
- Covenant and Rules Enforcement
- Assessment Collection
- Covenants - explanation/application
- Contract Preparation and Enforcement
- Condominium Property Act - Explanation/Application
- Common Interest Community Association Act Explanation/Application
- Owner or Contractor Suits
- Labor and Union Issues in Associations
- Lien Preparation and Foreclosure
- Developer Turnover, Disputes and Suits
- Unit Owner Bankruptcy and Mortgage Foreclosure
- Real Estate Sales and Closings
- Real Estate Tax Reduction for all units/properties