

Fair Debt Collection

Since assessments are fees for maintenance and use of utilities and not consumer debt, many association board members wonder if their communities are subject to the Fair Debt Collection Practices Act (FDCPA). Some may be surprised to learn most state and federal courts consider assessment to be “debts” according to this definition: A debt is any “obligation...of a consumer to pay money arising out of a transaction in which the money, unit, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes.”

The FDCPA does not apply to every owner, but rather specifically to *consumers*, who are defined as “any *natural* person obligated...to pay any debt.” This means the FDCPA does not apply to corporations, trusts or government entities.

If assessments are considered debts in your area, anyone—other than a board member or employee of the association—who attempts to collect assessments on your behalf must comply with the FDCPA. This means your attorney and probably your off-site portfolio manager or book-keeper (if they collect in their name) must comply.

Although the association and its employees are not required to comply with the act, when collecting unpaid assessments directly, the association should comply with the spirit and intent of the act because it is not overly burdensome.

Collecting a past-due assessment requires sensitivity, and it’s important that the association does not violate the owner’s rights. The FDCPA requires that when the association writes to an owner to collect late assessments, it must state:

- That the letter is an attempt to collect a debt.
- Any information the debtor gives will be used to collect the debt.
- The amount of the debt that has accrued and the name of the association.
- That the owner has 30 days to dispute the debt’s validity in writing.

If the owner disputes the debt, the association must send verification of this. The FDCPA prohibits those collecting debts from the following acts:

- Harassing, oppressive or abusive action
- Threatening violence or harm
- Publishing a list of owners who have refused to pay the debt (except to credit bureaus)
- Repeatedly using the telephone to annoy debtor
- Making false statements
- Misrepresenting the amount of the debt
- Depositing a post-dated check prematurely
- Threatening legal action not intended
- Sharing the delinquent party’s information with a third party without authorization

If a debt collector violates the act, the FDCPA says he or she may be liable for damages to the debtor, such as emotional distress or slander.

In addition, abusive debt collectors might have to pay punitive damages, attorney fees and costs if a violation occurs.

The FDCPA is a technical statute. To ensure compliance, the professionals that you rely on to collect delinquent assessments should be very familiar with the FDCPA and applicable state laws.