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Can You Let an HOA Owner's Debt Slide?

In this week's tip, we discuss whether it's ever OK for you to tell delinquent owners not to worry about paying off their debt to your HOA.

Florida prohibits the practice. "When we say 'debt,' what are we talking about?" asks Jed L. Frankel, a partner at Eisinger, Brown, Lewis, Frankel & Chalet PA in Hollywood, Fla., who advises community associations. "Assessments? Everybody has to pay them. One requirement we have in Florida is that everybody has to pay their share, whether it's based on percentages or some other method. If you have a two-bedroom condo, you pay a little more than the person with the one-bedroom or studio. That's one of the golden rules we operate under."

However, North Carolina is like many other states. Generally, there's nothing under the state's laws prohibiting a board from forgiving owners' unpaid debts to the association. But it's exceptionally rare.

"I have seen it," says Hunter, an attorney and partner at HorackTalley in Charlotte, N.C., who represents associations. "It's usually in self-managed associations that don't get good guidance from a manager or attorney. If they would have asked, they'd probably have been told it's not a good idea."

The most important impediment is that an HOA board has a fiduciary duty to the association's members to collect assessments and use the funds to maintain the common elements, says Hunter. If the board declines to collect from some owners, the responsibility then falls disproportionately on the other owners.

Fair enough. But let's take a hypothetical situation and see if there's any wiggle room. Let's say you have a long-time owner, somebody who's been involved in running and volunteering on behalf of the association (but who's not a board member, so there's no allegation the board's favoring its own members) who loses a job or has a sudden illness, throwing his finances into disarray for a while. Now the owner's back on his feet but still owes, say, 12 months of assessments. Is that enough of a hard-luck, couldn't-happen-to-a-nicer person story to trigger our experts' sympathy?

Find out the answer in our new article:

<http://www.hoaleader.com/members/899.cfm>

Best regards,
Matt Humphrey
President