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Board: Be Mindful of FCCPA When Collecting Past Due Condo Assessments

Commentary by
Carolina Sznajderman Sheir



Sheir

The ability to collect assessments from unit owners on a timely basis is a key component to the financial health and stability of a community association. An association's governing documents, as well as the applicable community association statutes (i.e., Chapter 718 for condominiums, Chapter 720 for HOAs and Chapter 719 for co-ops) provide several enforcement mechanisms to assist associations with their collection efforts, including lien and foreclosure rights, late fees, interest, fines, suspension of use and voting rights and the ability to demand rental payments from units occupied by tenants. However, an association must proceed with caution when implementing these valuable tools or risk running afoul of the protections provided to consumers under the Florida Consumer Collection Practices Act (FCCPA), and its federal counterpart the Fair Debt Collection Practices Act (FDCPA).

Facing the challenges of increased delinquencies, board members often take an aggressive stance against a delinquent unit owner, and try to creatively encourage owners to bring their accounts current. An association's governing documents and the Florida Statutes provide specific procedures that must be followed in connection with attempts to enforce the collection of assessments. However, we often see associations em-



ploying alternative methods. Some of these creative methods are subtle, involving the disconnect of utilities and cable, shutting off FOBs or other access cards to the property, denying services such as valet or denying access to amenities. Other methods involve public discussion of a particular unit owner's delinquencies, calls to owners, employers and relatives of owners regarding delinquencies, and other instances of public shaming. Such alternative or creative methods may run afoul of the FCCPA and the FDCPA, subjecting the association, board members

or property management companies to potential liability.

Both the FCCPA and the FDCPA regulate consumer protection in Florida. However, the Florida and federal statutes are not identical and a violation one statute does not necessarily constitute a violation of the other. Regarding the collection of association assessments, both the FCCPA and FDCPA consider assessments a "debt" or "consumer debt."

The FCCPA prohibits persons from engaging in certain prohibited practices while attempting to collect a consumer debt. Under the FCCPA, a debt or con-

sumer debt is defined as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."

Recently, the First District Court of Appeal confirmed that condominium assessments are consumer debts that fall within the purview of the FCCPA. Specifically, in *Kelly v. Duggan*, a condominium unit owner sued an association's president for violations of the FCCPA. A separate suit was filed in federal court against the association. The unit owner in *Kelly* alleged that the president of the association locked him out of his storage units, made public derogatory statements and disclosed information about the unit owner's reputation to a vendor.

The recent decision in *Kelly v. Duggan* is a reminder to all associations, board members and management companies to proceed with caution when attempting to collect past due assessments. It's recommended that associations work with their management team and legal counsel to develop collections policies and procedures to ensure that efforts undertaken to combat delinquencies do not place the association at risk of violation of the consumer protection statutes.

Carolina Sznajderman Sheir is a partner at Eisinger, Brown, Lewis, Frankel & Chaiet. She focuses her practice on real estate law, community association law, commercial litigation and developer representation and can be reached at 954-894-8000 ext. 238 or csheir@eisingerlaw.com.

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