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Navigating the Delicate World of Debt Collection: How To Collect What You're Owed, Even During Difficult Times

An Exclusive Special Report from
Community Association Management Insider

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January 15, 2021

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A Message from the President

Like the Great Recession and other crises before it, the COVID-19 pandemic has cast a bright light on how community association managers and their clients should handle the collection of past due assessments.

High unemployment and mortgage delinquency rates, as well as eviction and foreclosure moratoriums, have put many associations in a difficult position. They want to show compassion to owners suffering through no fault of their own, but they rely on assessments to maintain and repair common property and keep owners safe.

Of course, collections can prove challenging even when delinquencies aren't skyrocketing. That's because owners in default tend to fall into one of three categories.

"I call them the needy, the greedy, and the seedy," says Mitch Drimmer, president of business development at Axela Technologies, a Florida-based collections firm specializing in delinquent association fees. "The needy have debts but just don't have the money.

"The greedy have the money but repeatedly hold off until the very last minute; they're the ones who always ask for the fees to be waived.

"The seedy are those who bought their units with no intention of ever paying. They'll play every game possible, from quitclaiming the deed from one person to another to filing bankruptcy or lawsuits for debt collection violations — everything they can to prevent the association from collecting."

This Special Report provides expert advice on how you can increase the odds of collecting from every kind of debtor you and your clients may encounter. It includes insights on how to improve collections during both regular times and those periods when developments such as COVID-19 threaten the finances of wide swaths of owners.

Best regards,

Matt Humphrey
President
Plain-English Media
Publisher of *Community Association Management Insider*

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Building a Better Debt Collection Policy

Community associations and managers face several challenges when trying to collect funds from owners in default, but the biggest, says Brad van Rooyen, president of HomeRiver Group-Florida, which manages about 120 associations in the state, is the failure to have a formal debt collection policy. "You need an adopted collection resolution that provides the road map that says 'this is how it works, regardless of whether you're a board member or a new owner.'"

"Every client that we represent, and as a best practice for the industry, should have a detailed, shared collection policy."

Paul Grucza, director of education and client development, CWD Group, Inc.

Paul Grucza, director of education and client development at the Seattle-based management company CWD Group, Inc., agrees: "Every client that we represent, and as a best practice for the industry, should have a detailed, shared collection policy for two reasons. First, it allows management to do its job. Second, the owners need to understand what's going to happen and why."

To that end, van Rooyen's firm includes in its management agreement an outline of how the client wants collections handled.

"We encourage them to make it as uniform and automatic as possible," he says, "so the system can just generate collection letters and post fees and progress through the collection process with as little human element as possible."

But plenty of associations don't have policies. Brandan Hallaq, a condominium and real estate attorney with Hirzel Law, PLC, in Farmington, Mich., who handles collections for about 25 associations, estimates that about 50 percent of his clients lack a formal debt collection policy.

"Often their bylaws have a lot of what you'd want in a policy so they feel like they don't need to have one," he says.

Where the bylaws do include collection information, you must follow those parameters. The problem is that governing documents often don't provide enough detail.

"What's missing is, for example, at what point does someone go into collections — how long are we going to let this run wild?" says Mitch Drimmer, president of business development at Axela Technologies, a Florida-based collections firm specializing in delinquent association fees.

"If it's not in the bylaws, you can put it in your rules and regulations without a membership vote."

Covering the Bases

A comprehensive written debt collection policy requires several components. The most obvious include:

- The due date for assessment payments,
- The grace period,
- The late date, and
- The amount of the late fee (and whether it's automatic).

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Hallaq cautions that the interest fee must not exceed the maximum amount allowed by law. “And, if it’s not laid out very clearly in the governing documents — and most of the time it’s not — I want to see how the billing is done, for example, quarterly or monthly, so people know.”

He also reiterates the importance of checking all of these terms against the governing documents:

“Sometimes I’ll see documents that say you get a $25 late fee if you don’t pay by the 10th of the month, but the association says it’s $50. The association policy isn’t valid because you can’t contradict what’s in your recorded documents.”

The most effective policies go farther than merely laying out to the information above, though. They also spell out the “next steps” — that is, what will happen to an owner who doesn’t pay by a specified day. Hallaq refers to this as the “delinquency timeline.”

“Will you get a late notice, and, if so, when?” Grucza asks. “Will you have an opportunity to bring your account current? Will charges continue to accrue? Basically, you want to tell the debtor what they should expect should they fail to pay.”

A policy’s delinquency timeline must take into account the applicable state laws.

“Make sure you’re clear on the deadlines you have to hit. When you start running into trouble is when there are procedural issues that are messed up.”

Jennifer Horan, shareholder, Becker & Poliakoff

“Often, there’s a specific statute about which notices have to be sent to owners and when, and when you can take action and when you can’t,” says Jennifer Horan, a shareholder in the Naples, Fla., office of Becker & Poliakoff. “Make sure you’re clear on the deadlines you have to hit. When you start running into trouble is when there are procedural issues that are messed up.”

Van Rooyen advises making clear the threshold that triggers turning an account over to an attorney, too. “Generally it should be a dollar threshold,” he says. “If you use a time-based threshold instead, sometimes the cost to collect won’t be justified by the amount due.”

Associations also should consider whether, and how, they want to restrict owners’ access when owners fall behind on their payments.

“A lot more of my associations will shut down the right to use amenities, such as the pool and the clubhouse, but some don’t because they say they don’t have a way to enforce it,” Hallaq says. But one of his clients had success by implementing electronic key card access. “If someone goes delinquent, they inactivate the card.”

Of course, an association might not have the authority to take such actions. “The board needs to look in the documents and the state statutes to see if they have the right to deny people access to amenities,” Drimmer says. “If they do, that should be in the policy.”

According to Drimmer, depending on local law, an association might be entitled to shut off the utilities to a delinquent owner. He warns against cutting off someone from bundled cable TV/Internet/phone services, though.

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"It's a very bad idea, worse than cutting people off from water. If you cut off water, they can't flush their toilet, and it smells. But what if they have a heart attack and can't make a phone call? Ninety-five percent of managing an association is mitigating liability and exposure, so you have to consider the risks."

Keeping It Current

"The collection policy isn't a static document," Grucza says. "We recommend our clients review it once a year.

"It's important to review, revise, and disseminate the policy because you have changing ownership, and you have changes in boards who might have different philosophies. Sometimes things change — for example, maybe the $25 late charge doesn't seem to be working."

"It's important to review, revise, and disseminate the policy because you have changing ownership, and you have changes in boards who might have different philosophies."

Paul Grucza, director of education and client development, CWD Group, Inc.

Drimmer encourages regular review and revision to ensure compliance with state laws: "The legislature in most states changes the law as far as associations regularly and may change what's allowed for collections."

Moreover, he notes, times change. "If you've got a policy where you're going to foreclose or immediately put somebody into collections, but then along comes something like COVID-19, you might want to adjust for the situation society is facing." (See the section "Handling Collections in Times of Crisis" for more information on revisions in such circumstances.)

The Line Between Manager and Attorney

When it comes to enforcing the collections policy, the line between managers' and attorneys' responsibilities has been known to blur. This is yet another reason to adopt formal debt collection policies.

"Most collection policies will allow for the manager to do collection work up until a certain point, typically when a lien would be filed," Grucza says. "The account is packaged and sent over to counsel to carry out the process, and we tell the debtor they now need to deal with the attorney.

"We don't communicate or send any more letters at that point. If they call, we direct them to the attorney. We keep it very clean and crisp."

Hallaq applauds this approach.

"The only thing a manager should do is send the standard delinquency letters," he says. "After that, the manager should not send any letter or email or answer questions on the phone. Once a file is with the attorney, managers should do absolutely nothing other than refer owners to the attorney."

In particular, Hallaq stresses that managers should never accept payments from owners. He's had situations where a manager sends his firm a file with a balance of, say, $1,000. Then Hallaq performs a title search or does other work on the file, adding legal fees to the balance.

But the manager accepts a $1,000 payment from the owner, rather than the actual balance that includes legal fees. "There's a good argument that the owner's

When in doubt about whether you're the right party to handle a collections-related task, just ask the attorney.

payment is payment in full," Hallaq says, which leaves the association on the hook for the attorneys' fees.

Jennifer Horan, a shareholder in the Naples, Fla., office of Becker & Poliakoff, has run into issues where the board oversteps its bounds.

"When the treasurer or whoever starts trying to communicate with the owner after the file is with us, it becomes too many cooks in the kitchen" she says. "For example, the treasurer might send the payment to the wrong place.

"Attorneys know how the statute is set up as far as how payments are applied — there's a specific order and that can be very confusing for a layman who's just thinking, 'Well, they paid this, so I'll apply it here.'"

When in doubt about whether you're the right party to handle a collections-related task, just ask the attorney. It's unlikely to result in legal fees, and any fees would be far less costly than a misstep could be. ■

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Getting Repayment Plans Right

Community associations need more than just a debt collection policy. They also need to formulate a repayment plan policy that outlines how to respond to a delinquent owner who reaches out. And the cornerstone of such a policy is a written repayment agreement, a step many associations neglect.

"You need a written agreement so you can proceed with the lien process if there's a default."

Jennifer Horan, shareholder, Becker & Poliakoff

"We need to stop with the days of sending an email saying an owner can pay $500 for now," says Jennifer Horan, a shareholder in the Naples, Fla., office of Becker & Poliakoff. "You need a written agreement so you can proceed with the lien process if there's a default. My preference is that associations follow their collection protocol, but consider payment plans on a case-by-case basis."

The problem, Horan says, is that most repayment plans — such as they are — come from the association without the input of an attorney. Associations that go this route risk omitting key provisions.

Must-Have Provisions

Those provisions, says Brandan Hallaq, a condominium and real estate attorney with Hirzel Law, PLC, in Farmington, Mich., who handles collections for about 25 associations, include:

- When the payments are due (the exact day of the month),
- Who payments have to be made payable to,
- Where the payments must be received,
- That payments must be received by the due date (as opposed to postmarked), and
- That, in the case of default, any additional attorney or legal fees that the association pays as a result are added to the balance the owner agrees to pay.

"You also want a provision in there about future assessments," Hallaq says. "Not only are they paying $X on past due amounts, but anything that comes due after this date also must be paid on time.

"And I always have in there that, if you default, any waived interest or late fees are added back in. If you miss a payment, I'll send you a notice, and you have seven days to cure that default. If you don't, you're fully in default, and the entire balance is owed."

Brad van Rooyen, president of HomeRiver Group-Florida, which manages about 120 associations in the state, also expects the debtor to show some good faith. "The debtor has to bring something to the plan, meaning at a minimum bring 50 percent of the balance, with the remainder paid over as short of a period of time as possible," he says.

"Don't drag it out too long because what ends up happening is that it can become a big snowball. You have to look at how delinquent the individual is because if, at any time, they default on the plan or future assessments, all that

debt is going to be there. You don't want to be caught with a lot of money on the table."

Hallaq also considers the timing of an owner's request for a repayment plan. "If we've filed the lawsuit and then the owner wants a plan, I make them sign a consent judgment," he says. "If the owner defaults, the association has the right to enter a consent judgment that automatically gives it a judgment for the amount owing, and it can start garnishing the debtor's wages right away."

If the association hasn't filed a lawsuit yet, Hallaq includes a provision stating that, in case of default, the association can call the full amount due and owing and proceed with a lawsuit.

Regardless of the timing, compliance with legal restrictions is essential.

Regardless of the timing, compliance with legal restrictions is essential. "Make sure nothing in the written agreement contradicts the state's lien procedures or bars the association from taking an action you otherwise would have been able to take," Horan says.

Practical Considerations

Mitch Drimmer, president of business development at Axela Technologies, a Florida-based collections firm specializing in delinquent association fees, has some additional practical advice. For example, he says the plan should be paid via recurrent bank or credit card payments to reduce the odds of needing to chase down payments.

He also advises ensuring the plan covers all relevant amounts. "There should be a provision that allows the amount to be changed in case, for example, the assessments are raised during the payment period. The plan should contemplate special assessments, fines, and violations."

Keep in mind, too, that repayment plans set precedent. Or, as Horan puts it, no good deed goes unpunished.

"If you're going to do a repayment plan for one delinquent owner," she says, "you're going to have to do it for all of them. Associations need to keep in mind that everyone is dealing with their own struggles." ■

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Liens: To File or Not to File

It's not unusual for a community association board to drag its feet on filing a lien. Boards often assume that there's no point if the delinquent owner has a mortgage. But you know what they say about assumptions. The wiser path is to at least send the file to an attorney to conduct a title search.

The Mortgage Issue

"A title search is important to check status — is there a mortgage? Two mortgages?" says Brandan Hallaq, a condominium and real estate attorney with Hirzel Law, PLC, in Farmington, Mich., who handles collections for about 25 associations.

"In many states, the priority goes to whoever recorded first, and usually the mortgage is first in line. From time to time, we see a property has no mortgage and no lien, so I'm going to file a lien right away to get first priority. It's going to be really easy to get the money."

Hallaq also will file a lien when he sees a pending foreclosure by a mortgage company: "I'm going to file a lien immediately because if there's money left over after the foreclosure, I can demand the payment from the sheriff."

The mere presence of a mortgage shouldn't necessarily deter an association from filing a lien.

The mere presence of a mortgage shouldn't necessarily deter an association from filing a lien. What about properties with a second mortgage, though? That's obviously not worth the effort, right? Not so fast. It could depend on local law. In Michigan, for example, a condo lien automatically has priority over a second mortgage.

"If I see a second mortgage, I ask that company to pay the lien in full, so they're in second position," Hallaq says. The mortgage company can add the amount of the lien to the balance the debtor owes it. "About 75 percent of the time, the mortgage company pays it."

Where a mortgage lien already exists, Hallaq's clients sometimes turn to a foreclosure-to-rent strategy. "We'll have an owner who's delinquent and owes $10,000, but the mortgage company isn't foreclosing. There's usually little equity, so we'll foreclose, but no one will buy the property because it's subject to the mortgage.

"The association becomes the owner, and, if the lender isn't doing anything, we can evict the owner after the statutory redemption period and then rent out the property and collect those payments until the mortgage company finally forecloses. Sometimes it takes the mortgage company a long time to do that."

Foreclosure-to-rent isn't always the right call, though. "It's a strategy that's got to have the perfect alignment, where the owner is severely underwater and the association regards the debt as uncollectible," Hallaq says.

Of course, foreclosure to rent can backfire if associations aren't careful. "During heavy foreclosure as a result of the Great Recession, I saw a lot of owners had trashed the inside of the unit," says Jennifer Horan, a shareholder in the

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Naples, Fla., office of Becker & Poliakoff. “You have to really think about how much you’re going to have to put into the property to get it to a livable state.”

“I’ve started the process a few times, and what happened each time is the owner actually paid it off and redeemed the property once we started moving forward with the eviction.”

Brandan Hallaq, condominium and real estate attorney, Hirzel Law, PLC

But an association might not even get to that stage. Hallaq has found the foreclosure-to-rent strategy effective at prompting repayment. “I’ve started the process a few times, and what happened each time is the owner actually paid it off and redeemed the property once we started moving forward with the eviction.”

When the Lender Forecloses

Unfortunately, when a mortgage company forecloses on a property, assessments aren’t guaranteed, especially delinquent assessments.

“We’ve had foreclosures where the lenders pay up to six months of arrearages, and it’ll end there,” says Paul Grucza, director of education and client development at the Seattle-based management company CWD Group, Inc. “But I’ve also seen where lenders have paid the association every single solitary dime.

“If an association is only able to collect a certain amount from the lender, the only other option really is to charge off that balance as a bad debt because it’s got to get moved off the books somehow.”

The good news, reports Brad van Rooyen, president of HomeRiver Group-Florida, which manages about 120 associations in the state, is that most lenders aren’t letting foreclosed properties linger unsold.

“We’re seeing less and less that lenders are taking title and just sitting on that, partly because it’s hot real estate market, and units are selling very quickly,” he says. “It’s just not as big of an issue as it’s been in the past.” ■

Handling Collections in Times of Crisis

Many community associations have had second thoughts about their collections policies and practices due to the COVID-19 pandemic and its financial fallout. But this isn't the first time an economic downturn has hit owners' pocketbooks — and it won't be the last. How should associations respond in such times?

"People are under a lot of pressure, and the last thing we want to do is add pressure."

Brad van Rooyen, president, HomeRiver Group-Florida

"People are under a lot of pressure, and the last thing we want to do is add pressure," says Brad van Rooyen, president of HomeRiver Group-Florida, which manages about 120 associations in the state. "But we also need to make sure the association's interests are protected."

As nonprofit corporations, says Kevin Hirzel, managing member of Hirzel Law, PLC, a Michigan-based firm, associations have a fiduciary duty to operate. They can, however, take steps to be more sensitive to owners' difficulties.

During the pandemic, Hirzel's firm helped its association clients amend their existing collection policies to provide greater flexibility in dealing with owners undergoing a financial hardship. But he's adamant that his clients continue to place liens.

"If you don't, you may lose priority to the bank or not get paid if the unit is sold," Hirzel says. "After liens are placed, an association is in a better position to be flexible with respect to waiving interest and late fees, entering into payment plans, or delaying foreclosure.

"However, many collection policies don't currently permit this type of flexibility."

For example, some associations' policies state that they will sue if the owner doesn't pay off the balance due by receipt of the second letter from the attorney.

"They might want to amend those policies to get more flexibility to delay foreclosures and give people opportunities to work on a payment plan," says Brandan Hallaq, a condominium and real estate attorney with Hirzel Law, who handles collections for about 25 associations

Hirzel Law also has drafted sample language boards can use when owners seek payment plans due to COVID-19:

> The Association recommends that owners experiencing financial hardships contact the Board to discuss the possibility of a payment arrangement, the availability and terms and conditions of which will be determined by the Board in its sole discretion. Any such payment arrangement will not result in a waiver of any assessments but could potentially be used to defer payment. Owners who wish to discuss the possibility of a payment arrangement first must submit the following information for the Board to review:
>
> a. A written statement of whether the owner has experienced a job loss or reduction in working hours due to COVID-19 and written evidence of a job loss or reduction in hours to demonstrate

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that they are not able to timely pay their monthly assessments in full; and

b. A written proposal as to the amount of the monthly assessment the owner will pay each month, how long the owner will require the proposed payment arrangement, and, at the end of the proposed payment arrangement, a schedule by which the owner will pay outstanding assessment amounts due in addition to the annual and/or additional and special assessments as they become due.

The Board will review each written statement and proposal and, based on the facts and circumstances unique to each situation, may propose a payment arrangement with the requesting owner with terms and conditions it deems, in its sole discretion, to be reasonable and satisfactory in ensuring the Association can continue providing the services required under the Condominium Documents. It is anticipated that even if a payment plan is agreed upon, a lien will be recorded against the Unit to protect the Association's interests while the payment plan remains in effect.

“We typically didn't include a detailed payment plan provision like that in pre-COVID times,” Hallaq says “but this is something we may start recommending for associations with a lot of delinquencies.”

Crisis or not, van Rooyen says, associations shouldn't let defaults pile up: “Don't sit on collections. The last thing we want to see is associations becoming deer in the headlights like we saw in 2008, where some needed three to five years to dig out from under.” ■

“We typically didn't include a detailed payment plan provision like that in pre-COVID times, but this is something we may start recommending for associations with a lot of delinquencies.”

Brandan Hallaq, condominium and real estate attorney, Hirzel Law, PLC

The FDCPA: Does It Apply to You or Your Clients?

The Federal Debt Collections Practices Act (FDCPA) tightly regulates the conduct of what it calls "general debt collectors," imposing onerous restrictions on conduct in the pursuit of debt. As a so-called strict liability law, a violator's intent is irrelevant — covered debt collectors are liable even if the violation was minor or inadvertent.

So it's obvious why community associations and managers have long taken comfort in knowing that they're generally exempt from the FDCPA and its state counterparts because they're considered creditors, not debt collectors. But federal and state courts in recent years have found that the statutory definition of debt includes association assessments — and that managers that collect on behalf of associations can be debt collectors.

Assessments as Covered Debt

In *Williams v. Salt Springs Resort Ass'n* (Fla. App. 2020), the Florida Court of Appeals reversed its own 1997 ruling that association assessments aren't debts under the Florida Consumer Collection Practices Act (FCCPA). The court joined the ranks of numerous other jurisdictions that have come to the same conclusion.

The trial court had dismissed the lawsuit based on *Bryan v. Clayton* (Fla. App. 1997). In that case, the same Court of Appeals held that assessments don't constitute debt for purposes of the FCCPA or the FDCPA.

The FCCPA and the FDCPA both define consumer debt 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 ..."

The Court of Appeals found that the purchase of a condo is unquestionably a property transaction, and a condo is primarily intended for personal, family, or household purposes.

"Now there's a wave for assessments to be considered consumer debt because there's court precedent, and other states will use it. This ruling is like a virus, and it will spread."

Mitch Drimmer, president of business development, Axela Technologies

Because the obligation to pay assessments originates when an owner acquires the property, the court said, the debt arises from the purchase. In support of this position, the court cited several recent federal cases where the courts held association assessments can be debt. The court also noted that the earlier district court decisions that it had cited as support in the *Bryan* case have since been disapproved or are no longer good law.

"It's always surprised me that assessments wouldn't be considered a consumer debt," says Mitch Drimmer, president of business development at Axela Technologies, a Florida-based collections firm specializing in delinquent association fees. "That's the way it's been across the country, though.

"Now there's a wave for assessments to be considered consumer debt because there's court precedent, and other states will use it," he predicts. "This ruling is like a virus, and it will spread."

It's also worth noting that state statutes can cast a wider net than the FDCPA.

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"The FDCPA specifically regulates the behavior of 'debt collectors,'" explains Ellen Hirsch de Haan, a partner in the Tampa, Fla., law firm Wetherington Hamilton who's board certified in condominium and planned development law. "The Florida law prohibits actions to collect consumer debts by any 'person' and doesn't specify that the person has to be considered a debt collector.

"We may be seeing a trend in assessment challenges brought under the FCCPA, rather than the FDCPA, because the state law has a much broader application and would include an association board, volunteer, or manager." Other state debt collection laws may have similarly broad application.

Managers as Debt Collectors

Bear in mind, too, that it's not out of the question for a court to find a manager a debt collector under the federal law. A 2020 ruling out of the Sixth Circuit Court of Appeals illustrates how that could happen. (*Bates v. Green Farms Condominium Ass'n*, 6th Cir. 2020).

The FDCPA generally defines "debt collectors" as parties who operate a business that primarily collects debts or who regularly collect debts owed another. But it adds a separate definition solely for the purpose of a provision that regulates repossession of property.

After the owners in the case fell behind on their dues, the manager put a lien on their condo for unpaid dues, as required under state law to enforce a security interest. It subsequently hired a law firm to undertake a nonjudicial "foreclosure by advertisement," as permitted by Michigan law.

The owners sued the manager and the law firm under the FDCPA, claiming they both acted as a debt collector when they undertook the foreclosure.

The FDCPA generally defines "debt collectors" as parties who operate a business that primarily collects debts or who regularly collect debts owed another. But it adds a separate definition solely for the purpose of a provision that regulates repossession of property.

The separate definition also ensnares parties who operate a business that primarily enforces security interests. While general debt collectors must comply with all of the FDCPA's rules, so-called security-interest enforcers need only comply with the repossession regulation.

In 2019, the U.S. Supreme Court held that parties who assist creditors with nonjudicial foreclosure of a home are security-interest enforcers. It noted, though, that these parties could engage in "other conduct" — related to, but not required for, enforcement of a security interest — that would convert them into general debt collectors subject to the FDCPA in its entirety.

In the Sixth Circuit case, the owners didn't allege that the manager violated the repossession regulation. As a result, the court said, the manager could have violated the FDCPA only if it had acted as a general debt collector. The court therefore focused its review on whether the manager had engaged in "other conduct" that made it such a debt collector.

It concluded that the owners' complaint didn't identify sufficient facts to support their "conclusory" allegation that the manager was a debt collector. In other words, simply stating the allegation wasn't enough.

"It was a fantastic outcome for the manager, but I don't know that you'd necessarily see it again," says Joe Wloszek, a member of Hirzel Law, PLC, a Michigan-

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based firm that works with community associations. “The case doesn’t stand for the blanket proposition that a manager can’t be a debt collector.

“The result could have been far different if the plaintiffs had actually done due diligence on the front end and had more specific allegations that dealt with the repossession regulation, instead of just saying the manager was a debt collector.”

An Ounce of Prevention

Because managers could indeed be deemed debt collectors, Scott Weiss, of counsel for the Nashville, Tenn., law firm Ortale Kelley and a fellow in the College of Community Association Lawyers, advises including what he calls “the full Miranda” (a reference to the Miranda rights that must be read to anyone taken into custody by law enforcement) on all initial contacts with debtors, written or oral:

> “THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.
>
> The following notice is being provided to you pursuant to the Fair Debt Collection Practices Act:
>
> This debt will be assumed to be valid unless you dispute its validity, or any portion thereof, within thirty (30) days after your receipt of this letter. In the event you do notify Plaintiff’s Attorney in writing within the said thirty (30) days that you dispute this debt, or any part thereof, then Plaintiff’s Attorney will obtain and mail verification of the amount due. Plaintiff’s Attorney will also provide you with the name and address of the original creditor, if different from the current creditor. Please be advised that this is an attempt to collect a debt and any information obtained will be used for that purpose.”

“With the FDCPA being a strict liability law, I think HOA management companies should, at the very least, include the ‘Mirandas’ on communications they send to homeowners regarding delinquent accounts”

Scott Weiss, counsel for Ortale Kelley

Weiss says all subsequent correspondence should include a “mini Miranda”: “THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.”

If a manager fails to do so and is found to be a debt collector, it’ll be in trouble under the FDCPA.

“With the FDCPA being a strict liability law, I think HOA management companies should, at the very least, include the ‘Mirandas’ on communications they send to homeowners regarding delinquent accounts,” Weiss says.

“I’d be very surprised if most management companies are doing this, and it leaves them open to potential liability.” ■

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The calls related to the coronavirus started coming earlier and earlier, says Sandra Gottlieb, a founding partner of California homeowner association law firm SwedelsonGottlieb. "As the death counts climbed in the United States, people were panicking. It was ratcheting up every single day, and I heard the terror." In the midst of a public health…

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From governing documents and vendor contracts to communications with owners, community association boards of directors may feel like the constant deluge of paperwork is drowning them. "This can become a problem because community associations are required to keep a great deal more documents than any individual director is accustomed to in their personal lives," says…

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If the community you manage is considering setting an "acceleration" policy to cut down on the number of delinquent monthly assessments, make sure you know how it works.

Preserve Common Areas from Wheelchair Damage

Q: Several community members, and, occasionally some guests, use wheelchairs. Because of the size and design of some of the common areas, the walls have been dented, paint has been scratched on the walls and doors, and corners and doorways have been nicked. There has also been damage to carpets and wood floors from wheelchairs. It has been expensive to repair wall and floor damage caused by those wheelchairs to the common areas. What can I do to prevent this damage?

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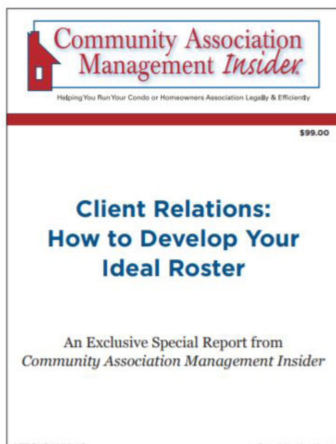
Navigating the Delicate World of Debt Collection: How To Collect What You're Owed, Even During Difficult Times

This Special Report provides expert advice on how you can increase the odds of collecting from every kind of debtor you and our clients may encounter. It includes insights on how to improve collections during both regular times and those periods when developments such as COVID-19 threaten the finances of wide swaths of owners. **Download now »**

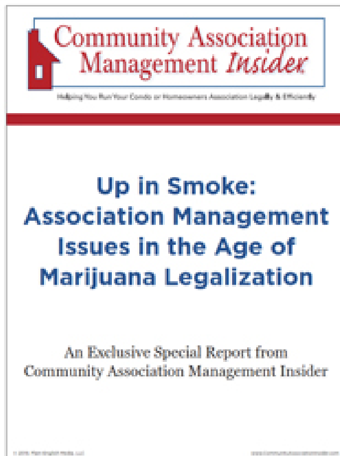
Managing Smoking, Pets, and Other Nuisances

Regardless of where you're located, or how long you've been in the business, the same types of problems tend to crop up over and over, don't they? It's not the big emergencies that make you pull your hair out, but the everyday hassles that start to grate when you get lots of people living together in the same community. Things like pet issues. And smoking. And the other chronic niggling nuisances that, over time, become a real pain in the neck. Which is why we've pulled together this Special Report specifically about managing these sorts of challenges. **Download now »**



Client Relations: How to Develop Your Ideal Roster

Strong relationships with your community association clients are always important — but not always easy — to maintain. As a manager, you don't have to settle for rocky treatment from clients that are overly demanding, unappreciative, or even abusive. Concessions can be made for exceptionally trying times, of course, but wouldn't you rather develop solid, productive, and mutually satisfying relationships with your clients? This exclusive Special Report aims to help you do just that. It provides valuable guidance on how to identify and land the right clients, establish and enforce boundaries, manage poor conduct, and leverage happy clients. **Download now »**



Up in Smoke: Association Management Issues in the Age of Marijuana Legalization

Those states with legal marijuana have seen it rapidly commoditized, with new businesses such as delivery services cropping up and becoming a part of homeowners' daily lives. Not surprisingly, the proliferation of pot has begun to have repercussions for community association managers, both as property managers and employers. Whether you live in a state where marijuana is fully legal, partially legal, or on the cusp of some degree of legalization, you need to know what that means on the ground.

This Special Report takes an in-depth look at some of the most pressing marijuana-related issues for community association managers and their clients and provides expert guidance on how to mitigate the associated risks. **Download now »**

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COVID-19 Impacts: Handling the Jump in Home-Based Businesses

January 15, 2021

The many domino effects of the COVID-19 pandemic and the ensuing recession include not only an increase in the number of people performing their current jobs from home, rather than at an office or other workplace, but also a surge in the number of home-based businesses. With so many people looking to replace lost income,…

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What Happens When an Owner Refuses To Rehome a Dog That Bites?

January 13, 2021

In the summer of 2019, an owner in the Parkview at Orion Commons Condominium Association chatted with his neighbor about the owner's concerns regarding the long grass in the common area behind their properties. The owner and his wife worried that it was hospitable to snakes, rodents, and ticks that might enter their yard where…

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