Can You, and Should You, Report HOA Delinquencies to Credit Agencies?

December 2014

Tags: Foreclosure, Collections

This article is part of an ongoing series in which we'll take your questions from the HOAleader.com discussion forum and get you the answers you need from experts who specialize in association management. If you have a question you need answered, post it on the message board.

An HOAleader.com reader writes, "Are HOAs capable of reporting delinquent HOA assessments and/or property liens associated with delinquent assessments to credit reporting agencies?"

Here we discuss whether you can do that and, more importantly, whether it's a good idea.

Answer Is Murky

It's not clear if you, as a community association, can report owners' delinquencies to reporting agencies. But others sometimes can, or do, on your behalf.

"In Illinois, the way the collection system works is an association will issue delinquency notices and file suit for nonpayment," explains Kelly C. Elmore, a Chicago-based principal at Kovitz Shifrin Nesbit, which represents thousands of community associations throughout the metro area. "If the delinquency isn't paid, the association will obtain a judgment. The courts are the ones who then report that judgment to the credit agencies. It's my understanding that it's not reported unless and until the court system records the judgment. And I don't know that our statutes address anything with respect to reporting."

If your state doesn't address this issue, your property manager may be able to do this on your behalf. "As a property management company, we can report," explains Jenny Key, the Austin, Texas—based vice president of RealManage, a San Rafael, Calif., association management firm that oversees properties in Arizona, California, Colorado, Florida, Louisiana, Nevada, and Texas. "However, we as a company typically don't. I don't know if it's because of this, but we don't have all the information needed because we don't capture things like Social Security numbers."

Your lawyer may also be able to do this on your behalf. But if your lawyer's like Ben Solomon, it won't happen. "In Florida, our law firm will not do this," says the attorney and founder of the Association Law Group in Miami Beach, Fla., who for more than a decade has advised more than 500 associations and also represents developers through his second law firm, Solomon & Furshman LLP. "And I don't believe any my colleagues in the legal field implement that procedure."

Nobody Likes the Idea

Perhaps our experts haven't dug into their state's precise rules because they don't recommend you pursue this tactic.

"I certainly wouldn't advise my associations to do this," says Elmore. "The purpose of the association is to administer association functions and foster an environment for the benefit of owners. I don't know how reporting to credit bureaus is beneficial to the overall administration of the association."

Solomon is similarly against the practice. "I don't recommend it," he says. "Lots of boards say, 'We'll hurt this guy's credit.' But it's just like placing a lien improperly. If you're wrong, you could have a defendant turn a case around on you. So there's potential liability in doing it.

"But the biggest issue is: What is it accomplishing?" asks Solomon. "If the goal is to get money, when a person is in foreclosure or bankruptcy, their credit is already awful."

Reporting may actually exposure your association to greater risk. "It seems to me that reporting credit information and delinquencies may subject your association to the provisions of the federal Fair Debt Collection Practices Act and similar laws in your state," says Elmore. "You always have to make sure you're following all the guidelines for fair debt collection practices. If you don't, you may be taking on additional burdens and liability by doing this."

In fact, says Solomon, the general rule with the federal FDCPA is that you never do anything to harass or embarrass the debtor. "What is your legitimate business or legal purpose for doing this?" he asks. "With a lien and foreclosure, it's clear you're trying to get money. There are a lot of attorneys out there who make a living coming after associations and collection companies for violations of the FDCPA. And anything you can do can be construed against you because the standard your actions are measured against is the lowest—it's the least sophisticated consumer."

Key also wouldn't pursue the practice but for a different reason. "I don't think it's a bad idea," she says. "But I think the biggest shame is when people don't come to the board or manager to explain the hardship they're under. Unless boards have seen excuses several times over, most boards will work with delinquent owners. Their message is: 'Rather than have us report you to credit agencies, come to us to discuss the situation. Maybe we can work something out.' Most boards are willing to work with anyone willing to work with them because it's less expensive for the association."

Related Articles

- HOA Debt Collection from A to Z: How to Create and Implement a Debt Collection System at Your HOA
- Can You--and Should You--Help HOA Owners in Dire Financial Straits?
- Collect More, and Collect It More Easily: Best Practices for Condo/HOA Debt Collection
- Publishing Delinquent Owners' Names: Shame on You?