

FAIR DEBT COLLECTION PRACTICES ACT

Policy

Association assessments are considered consumer debt as defined by the Fair Debt Collection Practices Act (FDCPA). Attorneys and collection companies who collect debts on behalf of associations are required to comply with FDCPA. Management companies, with the exception of those jurisdictions mandating compliance, are not obligated to comply with FDCPA.

Background

The Fair Debt Collection Practices Act (FDCPA) was enacted in 1979 to deter unscrupulous creditors from using harassment techniques to recover debt. The Act proscribes the type of activities debt collectors may undertake and requires certain disclosures to consumers. In the past, compliance by community association practitioners was viewed as voluntary. Today, compliance by attorney debt collectors is mandatory under law. With the exception of those management companies obligated to comply with the Act in particular jurisdictions, most management companies are considered to be agents of the association for whom collection of the debt is an incidental duty owed to the association. Because a management company is viewed, by virtue of its agency, as collecting debt for itself, management companies are not required to comply with FDCPA like a third party debt collector.

Definitions:

15 U.S.C.A. 1692 a

(5) The term “**debt**” means 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.

Association assessments fall under the definition of consumer debt.

(6) The term “**debt collector**” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests.

Association attorneys and credit agencies are required to comply with FDCPA.

The term does not include:

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

Management companies in most jurisdictions still fall under the exception of “F,” and are therefore not obligated under the FDCPA.

RECOMMENDATION:

CAI recommends that members become educated as to their responsibilities, if any, to the FDCPA, as it evolves and as it is interpreted in the case law in various jurisdictions. While third party collectors encompass attorneys and other collection agencies, management companies, as agents, are largely exempt (with the exception of certain jurisdictions). CAI supports the exemption of management companies from the Act and encourages conservative definitions under the Act to best preserve the balance of due process owed to debtors with the right of a private property owner to aggressively pursue money owed to it. **CAI opposes duplicative legislation at the state level that imposes state penalties for violations that are already incorporated within the FDCPA.**

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