



Is Your Debt Collection Process Fair? California Civil Code vs. FDCPA.

It isn't often that the Community Interest Developments in the State of California find themselves worrying about federal compliance. But there are times when it helps to remember that laws enacted at the national level can impact how we work in our communities. This year, that might mean looking at your collection actions and how you coordinate your California responsibility with the Federal requirements. It arises from a case from the Ninth Circuit Court of Appeals published in January 2017 (*Mashiri v. Epsten Grinnell & Howell*, No. 14-56927 (9th Cir. 2017)).

The facts of the case would not shock anyone familiar with Civil Code collection actions. An Association located in San Diego proceeded with standard collection practice, and notified the owner about the existence of a delinquent assessment. As part of the initiation of the California Civil Code Section 5660 notice, the letter stated that the owner had 35 days to bring the account current before a lien would be recorded against the property. In a separate paragraph, the letter also stated that the owner had the right to dispute the validity of the debt within 30 days. Both sections accurately reflect the requirements for debt collection respectively under both California and Federal law.

Within 20 days of the mailing of the letter, the owner requested the Association to validate the debt, and show proof that the Association properly notified the owner about the missing assessment. Although the owner did receive a response to the request for validation, there was no new information or proof of notice. When the account remained delinquent 48 days after the initial notice, a lien was recorded against the property. According to Civil Code Section 5675, the owner received a copy of the recorded lien within 10 days.

The owner filed suit in Federal Court, alleging both California and Federal violations of respective debt collection requirements. Initially, the trial court agreed with the Association's position. The notices all complied with both California and Federal debt collection practices, and the Association did not threaten to take any action it was unable to take to collect upon that debt. The trial court dismissed the owner's claims, and so the owner appealed to the Ninth Circuit Court of Appeals.

The Appellate Court sided with the owner. Essentially, the Court found that California Common Interest Developments could not merge State and Federal requirements to streamline collection. Although California and Federal requirements are complimentary and consistent, they are not identical. By overlapping the standard pre-lien notice from Civil Code Section 5660 and the right to dispute a debt from the Federal Fair Debt Collection Practices Act ("FDCPA"), the Association was not clearly stating owner's rights. In this case, giving an owner only 35 days to bring the debt current meant that an owner's right to request validation of the debt was effectively eliminated. As a result, the Appellate Court held that a letter cannot simply contain the statutory language in order to comply. Notices to owners must clearly communicate the rights respective to both California and FDCPA.

So with this case, now what? How do Associations respond? Although it is important to note that this ruling only sent the case back to the Federal Trial Court, it is also important to remember the Appellate Court was clear: reciting the California Civil Code does not ensure compliance with the FDCPA. Associations should take a look at their collection policies and make sure that they are compliant with FDCPA requirements.

First, what is the process for notifying owners about their delinquencies? Courts at all levels are looking at whether Associations are complying with proper notice procedures. Some Associations or their management companies will initiate contact with owners after one missed payment. Do those notices contain the required language about the right to dispute a debt? If not, the Association may want to look at revising their collection policy to see whether there are similarities with the Mashiri case.

Second, how does the Association (or its management company or collection company) work with owners to validate and verify the amount of debt? It is important to look at the delinquent account, and be able to identify the basis for each amount demanded. Everyone who works with delinquencies should know what categories can and cannot be included on a lien. However, you also have to know where those amounts came from and provide the supporting documentation for any reimbursement assessment or special assessment. Before shooting out a demand letter, make sure that you have the proper foundation so you don't have to untangle any knots later.

Associations should work with their vendors so that everyone knows how these issues will be addressed. Communication among working partners is key. Involve your management company and your attorney in the discussions. Make sure that everyone is comfortable with how you communicate with owners about their debt, and that both California and FDCPA requirements are fulfilled.

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