

Position Statement Regarding HB 2008: Relating to Protection from Debt Collection

CAI agrees with and supports the Fair Debt Collection Practices Act and the Oregon Unlawful Debt Collection Practices Act.

We support the intent of HB 2008; to protect debtors from unfair and unjust collection practices. However, we believe the legislation, if passed, will unintentionally have a adverse impact on the approximately 585,000 Oregon residents living in condominiums and homeowners associations.

RECOMMENDATION: We urge you to amend the legislation to exempt condominiums and homeowners association from application of HB 2008.

Consumer debt is typically debt that is incurred in purchase of a service or a product. Condominium/HOA assessments pay for common expenses shared by owners that are absolutely necessary for the communities to function, and in some cases, to be habitable. Condominium associations and planned communities are non-profit entities created to provide basic housing services of a community and municipal nature.

Assessment income is critical to pay for the maintenance, repair and replacement of building structures and other physical components of an association. If an association's members fail to pay such assessments, it often results in deferred maintenance, which we now know, from the Surfside tragedy, can have catastrophic consequences. What is more, assessments are used to pay for direct benefits for owners, such as trash pick-up, water, electricity in dark parking lots and lobbies, security gates and doors, sew service to homeowners, snow removal, master insurance policies that protect owners from being individually liable from lawsuits against the condominium, and other routine maintenance obligations.

These expenses are in direct contrast to typical consumer debt.

Consumer debt, when unpaid, is often borne by large credit card companies, debt buyers or other service providers whose businesses rely on a volume of customers so large that delinquent accounts do not threaten their viability. Moreover, consumer debt is often purchased by debt buyers who typically tack on additional costs so that consumers pay more than the additional debt. These companies are created for the purpose of generating profits whereas associations are created to be non-profits.

Unpaid condominium/HOA assessments are borne by other homeowners who pay their assessments on time. Because associations have a limited income stream, they generally cannot afford to pay substantial fees to lawyers to collect unpaid assessments without any mechanism for them to recoup those funds from non-paying homeowners.

Additional points

In addition, the provisions in this legislative proposal, in many cases, duplicative of those in the Federal Fair Debt Collections Practices Act, but with some conflicts that will cause debt collectors to have to choose which Act to follow and which Act to violate. Lawyers will be required to include language from both laws in their notices although that language is repetitive, at best, and conflicting at worst. This will, undoubtedly and unintentionally, confuse owners about what their rights are and how to protect themselves. It will also subject every debt collector in Oregon to liability, which, under the Federal and State Statute, will subject them to possible punitive damages.

The FDCPA has imposed additional regulatory requirements, some of which took effect on December 1st of 2021 and others took effect on January 29, 2022, which will require additional disclosures to be added to collection notices among other things. These changes to the FDCPA requirements are not consistent with this legislation, and will leave community association attorneys, who are already bound to comply with federal and local requirements on our collections practices, wondering if they will have to comply with yet another statutory regime that will not only cripple condo associations abilities to responsibly govern their communities, but runs a high risk of confusing the very people that it is designed to protect. And, given that debt collectors are expressly prohibited from sending collections communications to debtors that are likely to confuse them, the very existence of these conflicting requirements will make it nearly impossible for community associations to safely collect assessments from those owners who have not paid.

CAI does not support the legislation as written and asks that the include legislature clarifying provisions that exclude unpaid condominium and HOA assessments from the statute.

We welcome the opportunity to provide additional information and/or answer questions you may have, please contact Katie Anderson, CMCA, AMS, PCAM, Chair CAI Oregon Legislative Action Committee at kanderson@aperionmgmt.com or 541.389.3172.

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