

Can HOAs hire bill collectors for dues?

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Q. Is it legal for homeowner associations in North Carolina to use collection agencies to collect delinquent dues?

There is nothing to prohibit your HOA from using a collection agency to collect delinquent dues. The better question is whether using a collection agency is the most effective and cost-efficient method.

Collection agencies typically charge a "contingent fee" for their services - their fee is a percentage of whatever sum they collect, usually 25-30 percent.

The problem is that HOAs cannot always recover this fee from the delinquent homeowner. State statutes prohibit HOAs from charging a homeowner any collection or administrative fee that is not specifically authorized in their Declaration.

Unless your Declaration contains language that allows you to recover "collection costs" or "costs of collection," then you cannot charge the agency's contingent fee back to the homeowner; rather, the HOA must absorb the fee.

The methods employed by most collection agencies consist of calling and sending collection letters to the homeowner. Unless they have a licensed attorney on staff, they cannot file liens, foreclosures or lawsuits. It is very easy for a homeowner to simply ignore the agency's calls and letters, and state law requires that agencies cease calling the homeowner if the homeowner instructs them to stop.

Most every Declaration, however, does allow HOAs to recover attorney's fees and court costs incurred in the collection of delinquent debts. We have found the lien/foreclosure process to be very effective, and in most cases we are able to recover the full amount due the HOA, including attorney's fees and court costs.

Even if the HOA does not wish to pursue a foreclosure on an owner's property, having a lien in place against the property protects the HOA's claim, and ensures it will get paid if the property is sold or the homeowner refinances his/her mortgage.

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