By Ronald M. Bolt, ESQ.

Navigating the Complicated World of Collections

Of great interest to community association managers in Maryland is the recent opinion issued by the United States District Court for the District of Maryland, Southern Division, in the case of Fontell v. Hassett, 2012 WL2479543 (Civil Action No. AW-10-1472, June 28, 2012). In the case, a management company that issued collection notices and recorded liens was found to be engaged in "collection activity" for which a license is required under the Maryland Collection Agency Licensing Act (MCALA). The court further ruled that engaging in such collection activity without a license can be deemed, in some circumstances, a violation of the Fair Debt Collection Practices Act (FDCPA), the Maryland Consumer Debt Collection Act (MCDCA) and the Maryland Consumer Protection Act (MCPA). A violation of any of these laws can result in liability for money damages.

Generally, under the FDCPA, a "debt collector" does not include any person attempting to collect a debt before it is in default. Thus, the court noted that management companies often are not "debt collectors" under the FDCPA because they are involved in collecting assessments from the outset (Fontell at 4). They collect assessments when first imposed by the association and not as a result of having accounts assigned to them for collection upon default. The court found, however, that a different standard applies under the MCALA. Under the licensing law, a "collection agency" is generally a person who engages in the business of collecting a consumer claim for a third party. The court found that, although it was a close call, the management company was doing business as a "collection agency" (Id. at 10).

The activity engaged in by the management company included sending an invoice for a shortfall after an error was made in the initial billing of an annual assessment. The management company subsequently sent collection notices, including late fees, when the shortfall was not paid. Also, the management company recorded a lien against the plaintiff's property. These activities were undertaken by the management company before the case was assigned to legal counsel for collection.

Operating without a debt collector's license was deemed a violation of the MCDCA, which provides that a person may not attempt to "enforce a right with knowledge that the right does not exist" (Md. Code Ann. Commercial Law, Sec. 14-202(8)). The court found that the management company must have known it was not licensed as a debt collector in Maryland when it sent the collection notices and placed a lien on the plaintiff's property and any ignorance of the law would not excuse the violation.[i] The

court also found that collecting debts without a license was a violation of the MCPA, which prohibits "unfair or deceptive trade practices" (Id. at Sec. 13-301).

The case was remanded to the trial court for further proceedings on the issue of what damages the plaintiff suffered. The court noted that, as a result of the violation of the MCDCA or the MCPA, the plaintiff could receive compensatory damages for any injury or loss caused by the management company's acts, including mental anguish or emotional distress that the plaintiff is able to prove at trial (Id. at 9).

Given the court's decision, management companies that are not already licensed under MCALA should assess what collection activities are provided to their Maryland clients and talk to their attorneys about whether licensing is required. Under certain circumstances, engaging in collection activity without a license could be deemed a violation of Maryland and/or federal law for which a plaintiff may be entitled to compensatory damages.

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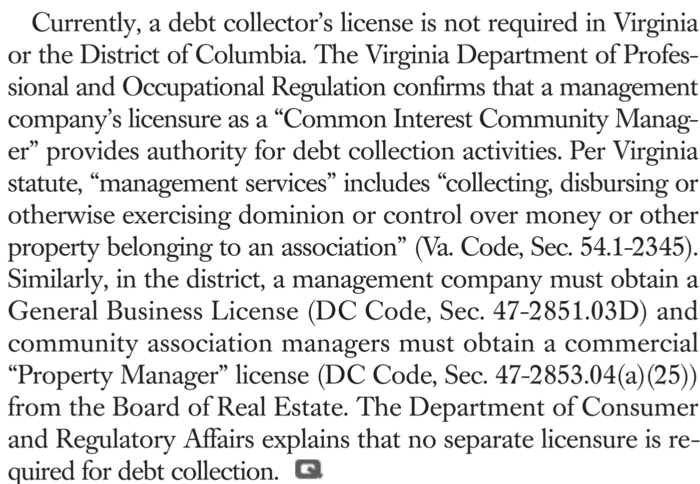

Currently, a debt collector's license is not required in Virginia or the District of Columbia. The Virginia Department of Professional and Occupational Regulation confirms that a management company's licensure as a "Common Interest Community Manager" provides authority for debt collection activities. Per Virginia statute, "management services" includes "collecting, disbursing or otherwise exercising dominion or control over money or other property belonging to an association" (Va. Code, Sec. 54.1-2345). Similarly, in the district, a management company must obtain a General Business License (DC Code, Sec. 47-2851.03D) and community association managers must obtain a commercial "Property Manager" license (DC Code, Sec. 47-2853.04(a)(25)) from the Board of Real Estate. The Department of Consumer and Regulatory Affairs explains that no separate licensure is required for debt collection.

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[i] The court noted that a violation of the MCALA could be a violation of the FDCPA under certain circumstances, but was not in this case because the accounts were assigned to the management company before default (Fontell at 3). The court noted that, under FDCPA, a "debt collector" is one who receives an account after default.