



ABSORBING CREDIT CARD TRANSACTION FEES

Why providing credit card processing of assessment payments may be problematic for an Association.

Introduction

Community Associations ("Associations") are required to levy regular and special assessments sufficient to perform their obligations under their governing documents and Ca. Civ. Code §1366(a). Associations may encounter difficulties in getting their members to pay assessments on a regular and timely basis. In response to these difficulties, some Associations are providing credit card processing of assessment payments as a courtesy to their members and/or an incentive for delinquent members to fulfill their assessment obligations while deferring the actual payment. The fees involved in processing assessments by credit card are then sometimes absorbed by the Association. Absorbing these fees is problematic because (1) it results in an inequity for the Association's members that pay their assessments by cash or check and (2) likely violates the assessment requirements of the Association's CC&Rs. Associations that provide credit card processing of assessments should ensure that the members paying by credit card are responsible for any transaction fees and costs involved.

The Inequity of Absorbing Transaction Fees

Association obligations typically include the maintenance of Association property and enforcement of the Association's governing documents. The Association relies on its assessment revenue to fulfill these obligations. If an Association absorbs the transaction fees to process assessment payments by credit card, the total assessment revenue realized by the Association from those payments is reduced. A hypothetical can help illustrate this point:

Imagine that an Association collects a \$100 assessment from its members each month. In processing one member's payment by credit card, the Association absorbs a transaction fee of \$3. The Association has therefore only collected \$97 from that member (\$100 payment less the \$3 absorbed transaction fee).

For each member that pays by credit card, the total assessment revenue to be collected by the Association is reduced by the absorbed transaction fees. This reduction in revenue can affect the Association's ability to fulfill its obligations under the governing documents. If so, the impact is felt not only by the credit card paying members who brought about the reduction in revenue, but also by the members who paid their assessments timely by cash or check. This is inequitable.

Potential Violation of Assessment Requirements in the CC&Rs

Most Association CC&Rs allocate assessments on a uniform basis (members all pay an equal amount to the Association each month). If part of a credit card paying member's payment is absorbed by the Association as a transaction fee, that member is paying less to the



Association as compared to if the member had paid by cash or check. Credit card paying members are therefore not paying the same amount to the Association each month as members paying by cash or check. This likely violates the uniform assessment requirement contained in the Association's CC&Rs.

Associations Electing to Provide Credit Card Processing Should Hold Those Members Responsible for any Transaction Fees/Costs

If an Association wishes to provide credit card processing of assessment payments, the Association should ensure that it does not absorb the transaction fees involved. The Association should hold its members paying by credit card responsible for any transaction fees or costs involved. This is consistent with Ca. Civ. Code § 1367.1 which states that "[a] regular or special assessment and any late charges, *reasonable fees and costs of collection...shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied.*" (Emphasis added.)

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