Reporting Assessment Payments to Credit Bureaus Is Good for Homeowners and HOAs

by Oscar Marquis, November 8, 2016

Last September, a number of homeowner associations (HOA) began reporting monthly assessment payments to a credit bureau. Such a standard financial management tool is normal for creditors, landlords and mortgage companies, but is new to the HOA industry. It is a practice that could promote a major positive shift in how HOAs manage their associations. The reporting of the information was facilitated by Sperlonga Data and Analytics, a data aggregation company that recently started helping HOAs report HOA assessment payments to Equifax.

No Added Liability for Management Companies and HOAs
Information reported to credit bureaus is subject to the Fair Credit Reporting Act (FCRA). The law requires that furnishers of information to credit bureaus not report information if they know it is inaccurate or have a good reason to believe it is inaccurate. But, if there are mistakes in the information they report, there is no private cause of action under FCRA. There is an exemption in FCRA from furnisher liability to consumers if the information is inaccurate. If there are systemic problems that cause the errors, the regulators can investigate, but as part of its service, Sperlonga assists in avoiding systemic problems. ***Under FCRA, furnisher liability to consumers can only arise if consumer disputes are not properly investigated.***

In addition, the Fair Debt Collection Practices Act (FDCPA) does not apply to HOAs and reporting information to a consumer reporting agency (CRA) won't make it apply. For example, Chase, Citibank, Capital One, landlords, cell phone companies and utilities report information to the credit bureaus but the reporting does not make them collection agencies. They are creditors and furnishers to CRAs. Similarly, HOAs will continue to be homeowner associations that furnish information to credit bureaus. They won't suddenly be in the collection business if they report information.

It is well settled law that FDCPA applies only to debt collectors, not entities to whom money is owed. FDCPA applies to "debts," which is defined as "any obligation of a consumer to pay money…which (is) the subject of a transaction (used) primarily for personal, family or household purposes…" HOA obligations are personal debts as defined by the law. But FDCPA only applies to "debt collectors" which is defined as "any person…in any business the principal purpose of which is the collection of debts owed or due…another." The assessment is a personal debt, but an HOA is not collecting debts due another - the debts are due to the HOA.

There should be no fear that an HOA is operating in the capacity of a collection agency when that HOA is reporting account information to a credit bureau any more than Chase or a landlord or a cell phone company become collection agencies when they report.

Finally, credit reports do not have information about race, religion, marital status or sexual orientation. There is no likelihood of discrimination since the HOA or Management Company won't decide whether to report on some owners and not others. They will report on everyone.

HOAs Were Not Able To Report to a Credit Bureau

The idea or need of homeowner associations reporting account information is not a new concept. For example, during the height of the previous economic downturn, some associations made direct inquiries to the credit bureaus with a request to start reporting their accounts. But the associations were told by the credit bureaus that a data furnisher must meet certain technical reporting requirements along with also meeting minimum quantity reporting requirements. By offering HOA assessment payment reporting, Sperlonga has been able to step in and help the associations meet those technical reporting requirements. This is important because ***reporting account information to a credit bureau will allow associations to achieve and maintain the same cash flow management leverage and capabilities that banks and lenders have when they report account information.***

Acceptance by HOAs and HOA Attorneys
There has already been widespread acceptance of association credit reporting by many HOAs and it is filling a need: ***"Reporting assessment payments will transform HOA Management,"*** according to Julie Stephens, the Broker and President for Exclusive Association Management in Atlanta, Georgia.

"Our goal is to offer the most innovative solutions to our associations. We continue to look for ways to provide unrivaled innovation, unmatched service, and useful solutions to the associations we manage. This is the next evolution in Association Management, and we are thrilled to be a part of it," said Ricky Zilem, Business Development Director at PS Properties.

"At the request of our clients, our firm has been looking for a credit reporting solution for some time. Associations now have an affordable solution for credit reporting," said Mike Crew, President of Homeowner Management Services.

Sperlonga's services are also being welcomed by prominent HOA attorneys: ***"This type of credit reporting is long overdue and should be welcomed by community associations throughout Florida and the rest of the United States,"*** said Jeff Rembaum, Esq. of Kaye, Bender, Rembaum Attorneys at Law.

Alternative Credit Scores
In recent years, nontraditional information has been included in credit reports to help consumers with little credit history to gain access to credit. And credit scores have been developed that take account of alternative data. An FTC study concluded that "there are common

underreported transactions that could be useful in evaluating creditworthiness in particular, rental payments and utility payments." I'm sure they would have included HOA payments if that were on the horizon. The Consumer Financial Protection Bureau (CFPB) conducted ***a study of "credit invisibles" and concluded "that there are 26 million adults in the United States without a credit record."*** Utility, cell phone, rental and HOA information would make these "credit invisibles," visible.

Empowers Homeowners and Homeowners Associations

Reporting HOA assessments to a credit bureau can have a positive impact on a consumer's credit profile. The consumer regulatory agency, the CFPB just released a report, Project Catalyst, which looks for innovators seeking to expand access to credit to borrowers who may be excluded or mispriced by existing credit models. The CFPB sees opportunities to expand access by incorporating nontraditional data into credit reports. The CFPB remains interested in developments that would support expanded access to responsible credit for consumers. HOA data is an example of such nontraditional data that would enhance such access.

Conclusion

All this activity by the government regulators, national credit bureaus, and credit scoring companies has encouraged the reporting of new types of data to the credit bureaus so that credit reports present a fuller picture of a person's payment history. Adding homeowner assessments to credit reports helps consumers as well as HOAs without adding any significant business or legal risk to the HOAs.

Oscar Marquis is the principal of the law firm, Oscar Marquis & Associates, which specializes in privacy and consumer reporting. Mr. Marquis served as General Counsel of TransUnion LLC, one of the three national consumer reporting agencies, for over 24 years. He also served on the Federal Reserve Board's Consumer Advisory Council. [*https://omarquislaw.com/*](https://omarquislaw.com/)