

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Division of Credit Practices  
Bureau of Consumer Protection

August 31, 1992

Lorraine M. Sheehan  
Carlton, Fields, Ward, Emmanuel,  
Smith & Cutler, P.A.  
One Harbour Place  
P.O. Box 3239  
Tampa, Florida 33601

Dear Ms. Sheehan:

This is in response to your July 22, 1992, letter requesting an informal staff opinion concerning the Fair Debt Collection Practices Act ("FDCPA" or "Act"). I apologize for the delay in responding.

As we discussed in our telephone conversations and as set out in your letter, your question is based on the following set of facts. Your client is a management company for various time-share condominiums. Pursuant to contracts with the various condominium associations, the management company, in exchange for a fee, is required to manage, maintain and operate the condominiums for and on behalf of the associations. Each year, the management company is responsible for preparing an itemized annual budget for each association. Once the budgets are approved by the respective boards of directors of the associations, the management company is responsible for billing and collecting the annual assessment due from each time-share owner. According to the condominium documents, the time-share owners agree to pay the annual assessment, on a pro-rated basis, for the expense of operating, managing and maintaining the condominiums. The management company bills the time-share owners for the assessments as soon as they become due; the association does no billing of its own.

In collecting the assessments, the management company is authorized to send follow-up letters to delinquent time-share owners and collect late charges and interest when the assessments are not paid when due. In addition, the management company, as agent for the associations, has the right to file a "claim of lien" against a time-share owner's interest in the event the assessments are not paid. Such a claim of lien can subsequently be foreclosed upon by judicial procedure.

You ask whether, based upon the foregoing facts, the management company falls within the FDCPA's definition of "debt collector." Section 803(6)(F) excludes from the definition of debt collector:

any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . (iii) concerns a debt which was not in default at the time it was obtained by such person.

It is my understanding that the assessments being collected by your client, the management company, are current when it begins sending bills to the time-share owners. Because the debts (the assessments) owed to another (the condominium associations) are not in default at

the time the management company obtains them, the management company does not appear to be a debt collector for purposes of the FDCPA when it is collecting them.

The views expressed herein represent an informal staff opinion. As such, they are not binding on the Commission. They do, however, reflect the staff's current enforcement position.

Sincerely,

Thomas E. Kane  
Attorney  
Division of Credit Practices