

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

Division of Credit Practices  
Bureau of Consumer Protection

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Thomas E. Kane  
Attorney

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Kenneth R. Goodacre, CPM  
Senior Vice President  
Legislative Affairs Division  
Institute of Real Estate Management  
700 Eleventh Street, N.W.  
Washington, D.C. 20001-4507

Dear Mr. Goodacre:

This is in response to your letter requesting a staff opinion regarding the applicability of the Fair Debt Collection Practices Act (FDCPA) to property managers. I apologize for the delay in responding. You seek guidance on three questions, which I will address sequentially.

*1. Are property managers subject to the requirements of the FDCPA?*

The FDCPA applies to debt collectors only. Thus the threshold question is whether property managers fall within the definition of "debt collectors" in the FDCPA. 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.

If the property manager is an agent of the property owner, the property manager probably is a "creditor" and not a "debt collector" because the debt (the rental payments) would not be owed to "another."

Moreover, even property managers who are not agents of the property owner probably are not "debt collectors" for the following reason. It is my understanding that rental payments being collected by property managers are current when the property managers begin sending bills to renters. Because the debts (the rental payments) owed to another (the property owner) are not in default at the time the property managers obtain them, the property managers do not appear to be debt collectors for purposes of the FDCPA, even when they collect rental payments that were current when obtained but subsequently become delinquent.

*2. Under what circumstances is a property manager considered a debt collector?*

Under Section 803(6) of the FDCPA, a property manager who is an agent of a property owner ceases to be a "creditor" and becomes a "debt collector" when, "in the process of collecting [a rental payment], [the property manager] uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt."

A property manager who is not an agent of the property owner becomes a "debt collector" if he regularly collects rental payments that were delinquent when the property owner assigned them to him.

*3. Are attorneys attempting to collect delinquent rent payments on behalf of a property manager considered "debt collectors" under the FDCPA?*

This office has previously stated in the Commission Staff Commentary on the FDCPA (53 Fed. Reg. 50097, December 13, 1988) (copy enclosed) that the definition of "debt collector" includes "a firm that regularly collects overdue rent on behalf of real estate owners . . . because it 'regularly collects . . . debts owed or due another.'" Section 803(6), comment 1, 53 Fed. Reg. at 50102. Using the same reasoning, an attorney who regularly collects overdue rent on behalf of a property manager would also be considered a "debt collector" and would thus be governed by the FDCPA.

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

Enclosures