

Delinquent Homeowners—Who Knew?

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Associations are frequently asked to provide members of the association with a list of the homeowners who are delinquent in their assessment payments. Under California law, a Board is not obligated to provide such information to the general membership for several reasons. Further, we believe that provision of the information is inappropriate, and may be a violation of the debtor-homeowner's privacy rights.

Under the Open Meeting Act (Civil Code section 1363.05), members are NOT entitled to attend executive session meetings of the Board that are held "to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments...." This is a clear indication that the legislature considers information about owners' accounts and delinquencies to be highly confidential.

Further, under Civil Code section 1365.2(d)(1), the statute that addresses the types of documents that may be disclosed to a member pursuant to an inspection request, associations are entitled to withhold information if "the release of the information is reasonably likely to compromise the privacy of an individual member of the association," or the information relates to "records of disciplinary actions, collection activities, or payment plans of members other than the member requesting the records."

In the event an association receives a request from a member asking for a list of the members who are delinquent in their assessment payments, under Civil Code section 1365.2(d)(4), the association must provide a written response that explains the legal basis for the association's refusal to provide the requested information. The short answer is, "This information is protected by California law, and will not be produced."

In summary, this information is volatile, and open discussion of the information could have troubling consequences for the association. Suppose, for example, that a delinquent owner is attempting to refinance, and claims that disclosure of information regarding his collection status resulted in a denial of the loan. And what is the benefit to the association of providing the information to other owners? Creating a "hall of shame" or holding up delinquent owners for ridicule is generally not an effective collection tool. Finally consider that the collection of this type of debt is, in certain circumstances, subject to state and federal fair debt collection practices legislation. It is unwise to publish information when to do so may arguably lead to liability under such legislation.