

## Are Deadbeat Lists Dead? Community Associations vs. the Florida Consumer Collection Practices Act

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Assessments owed to condominium and homeowners associations (Associations) now may be consumer debts as defined by the Florida Consumer Collection Practices Act (FCCPA). Consumer debts (or debts) under the FCCPA are defined as a (1) consumer's obligation or alleged obligation to pay money (2) arising out of a money, property, insurance or services transaction which is (3) primarily for personal, family or household purposes.

### Florida's Fifth District Court of Appeal's Ruling

Florida's Fifth District Court of Appeal (Fifth DCA) previously has held that assessments owed to Associations are not consumer debts and, therefore, the FCCPA does not apply. Yet in an opinion on June 12, 2020, *Williams v. Salt Springs Resort Condominium Association*, the Fifth DCA receded from its prior precedent, ruling that assessments owed to a condominium association can be FCCPA consumer debts. In its ruling, however, the court declined to find that assessments owed to Associations are automatically consumer debts; thus, whether assessments owed to Associations are consumer debts will depend on the facts in each case.

### Why This Matters (FCCPA Compliance)

This ruling is significant as Associations and management companies now may have to comply with the FCCPA. For example, the FCCPA prohibits certain consumer debt collection practices, including a ban on communicating with the debtor during certain times of the day and publishing a list of the debtors names, commonly known as a "deadbeat list", for the purpose of enforcing or attempting to enforce collection, which is what occurred in the *Williams* case.

Importantly, the FCCPA's application to Association assessments does not apply only when a unit owner is delinquent. Rather, the Fifth DCA's decision in *Williams* indicates that the FCCPA's application originates when a unit is purchased and can even extend to assessments owed on the unit prior to the purchase. Lastly, if an Association, a member of an Association's board

of directors, or a management company fails to comply with the FCCPA, such parties may face a class action lawsuit and could be liable for the plaintiffs' actual damages, court costs and reasonable attorney's fees, together with up to \$500,000.00 in additional statutory damages depending on the number of class members and such parties' net worth.