Late Fees & Interest

Given that over 99% of Homeowner Associations (HOAs) waive the late fees and interest that were charged to the homeowner's account due to non-payment or late payment of the homeowner's assessments, one might ask "why does the HOA charge late fees and interest in the first place?" Obviously, given the aforementioned waiver rate, it can't be for revenue generation and although punishing the delinquent homeowner may play a role, it certainly isn't the driving reason.

Clearly, the reason for this is to get the past due assessments paid and brought current, so when an account is placed at a collection agency, the primary objective of the collection agency is to get the assessments paid in full. Once this objective is achieved and the collection fees are paid in full or settled in full (partial write-off or full write-off of collection fees), the Notice of Claim of Lien for Delinquent Assessments should be released and the account should be closed at the collection agency.

Closing the account in collections does not mean that the homeowner does not still owe the HOA for late fees and interest. It simply means that the collection agency is no longer involved. The collection agency was charged with recovery of past due assessments and that charge will have been satisfied. There are a host of reasons why an account should not remain in collections for late fees and interest only:

1. **Federal and State governments take a dim view of third-party collection agencies that collect late fees and interest on behalf of their clients.** In many ways, this is the golden age of HOA collections. The passage of SB306 and the Super-Priority covering 100% of delinquent assessments (provided your collection agency has done their job correctly) has made foreclosure virtually unnecessary. The last thing anyone needs is killing the goose with the golden eggs by drawing unwanted scrutiny.

2. **If an account is paid in full sans late fees and interest and is not closed, the homeowner will not get a statement.** In some cases, the account could stay in collections for months or even years without a single statement going out to the homeowner. Moreover, the late fees and interest are still not getting paid and the homeowner will likely have no idea that they are delinquent and will likely think everything is fine with their account. This can cause bad blood between the homeowner, the management company, the collection agency and the HOA. **<u>A homeowner not receiving a statement is bad for everyone.</u>**

3. **As stated earlier, closing an account with late fees and interest outstanding does not mean that the homeowner does not owe a balance.**

4. **Third-party collections is successful because of leverage. The leverage in HOA collections is a collection process that leads to foreclosure**. Since no one is going to foreclose on a homeowner for late fees and interest only, there is no leverage. If there are outstanding late fees and interest on a property, the HOA can still recover this balance through the enforcement of their lien at the time of property sale if necessary.

5. **Red Rock Financial Services routinely writes off a portion of its fees if it means the HOA getting paid in full for their assessments.** Your collection agency may do the same, albeit unlikely. Red Rock does this to achieve the objective of getting the delinquent homeowner's assessments paid in full and get them out of collections. Failing to close the accounts runs counter to this objective.

One last thing that should be considered is the fact that in all other forms of collections with exception of lending, there are either no late fees and/or interest charged by the client or the late fees and/or interest is written off by the client if the account is sent to a collection agency. HOA collections is the only non-lending entity that even remotely expects their collection agency to collect late fees and interest on their behalf. As stated, the normal course of business is to write off late fees and/or interest on any account that is sent to collections. Property management in the apartment industry always writes off late fees and/or interest on accounts sent to collections.

If an HOA does write off late fees and/or interest (the 99%) after the account is closed in collections then it is important that this physically gets done. Better still, write off the late fees and/or interest before it comes to collections. If this is not done, what might happen is the homeowner's assessment payments may end up being posted to late fees and/or interest causing the homeowner to become delinquent over time on their assessments and end up back with the collection agency. This is tragic for all the reasons previously mentioned.