



John M. Hines  
[jhines@craryhuff.com](mailto:jhines@craryhuff.com)

329 PIERCE STREET, SUITE 200  
SIOUX CITY, IA 51101

**CRARYHUFF.COM**  
**PHONE:** 712.277.4561  
**FAX:** 712.277.4605

February 5, 2021

***Sent via Email***

Alex Halbach  
Cutler Law Firm, LLP  
140 North Phillips Avenue, 4th Floor  
PO Box 1400  
Sioux Falls, South Dakota 57101  
[alexh@cutlerlawfirm.com](mailto:alexh@cutlerlawfirm.com)

Re: Sunrise Cove Time-Share Association, Inc. – Your File #6202.01

Alex,

We have reviewed your email response to our letter dated January 22, 2021, and the additional items you raised in our phone discussion on January 26.

Goodmanagement, LLC maintains records on behalf of Sunrise Cove Time-Share Association, Inc. Your clients have requested to review records of the Association, including account information, identifying information, payment histories, and balances owed for each Time-share Estate. Goodmanagement intends to provide the Owners with all information and documents the Owners are entitled to under the law and the Bylaws, as long as providing that information does not violate any applicable state or federal debt collection laws.

In your email, you stated that the present situation is identical to *Harris v. Liberty Community Management, Inc.*, 702 F.3d 1298 (11th Cir. 2012). In that case, the 11th Circuit held a property management company's collection of unpaid assessments on behalf of a homeowner's association fell under one of the exceptions to the FDCPA, because (i) the company had a bona fide fiduciary obligation to the association; and (ii) the debt collection activities were incidental to the company's duties under the management agreement. We are unable to advise Goodmanagement to rely upon that case for several reasons.

First, the 11th Circuit case is not binding in this jurisdiction, and there is no guarantee an Iowa state or federal court, or the 8th Circuit, would agree with 11th Circuit's analysis. There is no relevant case law in this jurisdiction. Second, the analysis of whether an entity is a debt collector, or whether any exception applies, is heavily fact dependent. Homeowners' associations differ considerably from time-share estate

associations in many ways. Additionally, *Harris* did not involve the disclosure of debtor information to third parties.

Third, even assuming that a federal exception applies, and communication regarding the debts to third parties would not be prohibited by federal law, our concerns regarding the Iowa Debt Collection Practices Act would remain unresolved. The State Act utilizes different definitions, and the analysis differs from that under the FDCPA. *See Lynch v. Custom Welding & Repair, Inc.*, 142 F. Supp. 3d 814, 823 (N.D. Iowa 2015) (declining supplemental jurisdiction over State Act claims, noting “the statutory scheme enacted by the [state] differs in many ways from that created by the FDCPA. For example, the [State Act’s] definition of ‘debtor collector’ is more expansive than the FDCPA’s.”) We have not located any Iowa authority that indicates communicating the debtor-owner information to your clients is permitted under the State Act.

Certainly, if any section of the Bylaws expressly stated that each Owner consented to sharing debtor information then Goodmanagement would have fewer concerns with providing the information. Express consent of the debtor is contemplated in both the State Act and FDCPA. But the present language of Article VI, Section 6 falls well short of such explicit authorization.

Lastly, in our January 26 phone discussion, you posited that the Owners were otherwise entitled to the debtor information because the Owners are, in effect, the creditors. We, too, considered this theory in our initial analysis of the State Act and FDCPA, but rejected it because the Owners do not fit the statutory definition for “creditor” under either act.

Goodmanagement is open to exploring solutions to provide your clients with the information they are seeking. Ultimately, that solution will be dictated by the information your clients believe is essential for their purposes – it may be possible to limit the disclosure yet still provide your clients with the information they need. Otherwise, it might be possible to obtain express consent from all Owners for the requested information to be shared amongst Owners.

Again, Goodmanagement has no qualms with providing all information the Owners are entitled to under the law and Bylaws, including accounting records. We are happy to work with you and your clients to provide all such information in a way that is not violative of the State Act or FDCPA. After you have had the chance to review with your clients, please contact me so that we can coordinate the time, manner, and contents of the records review. Thanks.

Sincerely,



John M. Hines  
For the Firm