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# Can HOA board forgive unpaid assessments?

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**Q:** Our homeowners association's board of directors forgave homeowners who were two to three years behind on their assessments. This was done without our knowledge, and we found out about it before our annual meeting. Is this legal? This seems unfair to the homeowners who pay their dues every year.

**A:** There is nothing in North Carolina homeowners' association law that says an HOA board can't "forgive" unpaid assessments from homeowners. However, I can tell you that forgiveness of debt by an HOA is very rare.

The reason is that the board has a fiduciary duty to the members of the HOA to collect the assessments and use those funds to maintain the common elements in the community. The financial burden of uncollected assessments will eventually fall on the shoulders of the other homeowners.

Since you haven't shared any details of the board's rea-

sons for the forgiveness of the debt, it is impossible to say whether their reasoning was justified. The board certainly should not play "favorites" by granting waivers to some owners and refusing to grant waivers to others.

That would subject the HOA and its board to liability for capricious, arbitrary and possibly discriminatory enforcement of the HOA's Declaration of Covenants, Conditions and Restrictions.

If a homeowner is not able to pay assessments in full when due, or in installments within a reasonable time after they become due, the board should engage a lawyer to file a claim of lien against the property to secure the debt.

This protects the HOA by greatly enhancing the odds that the HOA will get paid in the event of a sale, short sale or mortgage foreclosure of the property, or a mortgage refinance or bankruptcy filing by the homeowners.

A claim of lien is valid and enforceable for three years from the date it is filed. The board is under no obligation to proceed with a foreclo-

sure of the lien unless the board determines that doing so is in the best interest of the HOA as a whole.

But filing the lien at least protects the HOA's claim while the board continues to evaluate the homeowner's situation and ability to pay.

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