

Can HOAs levy a rental fee?

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Association Answers

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Q: May a North Carolina homeowners' association impose a surcharge on units that are rented out by a homeowner? Our HOA has proposed a fee of \$25 per month to be assessed against all rental properties.

A: HOAs only have whatever authority is granted to them under the North Carolina laws and the HOA's governing documents. The laws do not grant HOAs the authority to levy any type of fee or surcharge against owners of rental property.

In fact, the law specifically states that "an association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration."

So, unless your community's declaration specifically allows the HOA to impose a rental surcharge, it cannot do so.

Recovering foreclosure fees is allowed

Q: If an HOA needs to file a lien or foreclosure against a property for failure to pay the HOA assessments, can the HOA recover its attorney fees and court costs, in addition to the unpaid assessments, late fees and possibly interest?

A: In most cases, the answer is "yes." Both the N.C. Condominium Act and the Planned Community Act give HOAs the right to recover their fees for foreclosures.

The pertinent portion of the law reads: "a judgment, decree, or order in any action brought under this section (allowing the HOA lien and foreclosure) shall include costs and reasonable attorney's fees for the prevailing party." The law also imposes a cap of \$1,200 in attorney fees for uncontested foreclosures. There is no cap if the foreclosure is contested.

Prior to sending the account to a lawyer for a lien, the HOA is required by law to send the owner a letter giving the owner 15 days to either pay the debt or contact an HOA representative to discuss payment options

(a name and phone number of an HOA representative must be provided in the letter).

The HOA is not required to offer or accept any alternate payment arrangements, but virtually every HOA I've ever represented has been willing to work with owners (within reason) who cannot pay in full all at once.

The letter must also advise the owner that if he does not pay or work out a payment plan within 15 days, he will be responsible for all attorney fees and court costs arising from any legal action to collect the assessment.

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