



January 4, 2017

To whom it may concern

Re: E-check merchant fee

The question has been asked as to why there is a \$1.99 fee related to an E-Check payment option when paying the dues at Villages of Westcreek HOA.

Villages of Westcreek is managed by Spectrum Association Management. Spectrum is an HOA management company and relies on established industry vendors for merchant services such as E-checks.

The merchant charges a fee for the service and the system they make available to Spectrum and Villages of Westcreek.

Villages of Westcreek and Spectrum continues to make fee free payment options available to all residents of the community such as a payment with traditional check. Homeowners are not required to use the E-check option. It is just an option for those who prefer this payment type.

Thank you.

Sincerely,

Spectrum Association Management



2601 N. Lamar Blvd
Austin TX 78705

512-936-7600
Fax: 512-936-7610
Consumer Helpline: 800-538-1579
Email: info@occc.state.tx.us

March 10, 2014

Chrissy L. Schwennsen
Pulman, Cappuccio, Pullen, Benson & Jones LLP
2161 Northwest Military Highway, Suite 400
San Antonio, TX 78213

Re: Credit card surcharges for homeowners' association assessments

Dear Ms. Schwennsen:

On February 17, 2014, you sent an email to the Office of Consumer Credit Commissioner (OCCC). Your email asks whether the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code applies to assessments by homeowners' associations. General assessments that are solely for the maintenance of the association would not be subject to the credit card surcharge prohibition, because these assessments do not involve the sale of a good or service. However, if the assessment pays for goods or services that the association provides for the individual benefit of particular homeowners (e.g., landscaping services or garbage removal), then the assessment would be subject to the credit card surcharge prohibition.

Section 339.001(a) provides: "In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment." The prohibition applies to "a sale of goods or services." Sales typically involve a bargained-for exchange, and in particular, sales of goods involve the passing of title to property. Tex. Bus. & Comm. Code § 2.106(a); *Sifuentes v. Carrillo*, 982 S.W.2d 500, 505 (Tex. App.—San Antonio 1998, pet. denied). Texas courts have defined "services" as "action or use that furthers some end or purpose: conduct or performance that assists or benefits someone or something: deeds useful or instrumental toward some object." *Riverside Nat'l Bank v. Lewis*, 603 S.W.2d 169, 174 (Tex. 1980); *Van Zandt v. Ft. Worth Press*, 359 S.W.2d 893, 895 (Tex. 1962); *Canfield v. Bank One*, 51 S.W.3d 828, 838 (Tex. App.—Texarkana 2001, pet. denied).

Whether a homeowners' association may impose a credit card surcharge depends on whether it engages in the sale of a good or service. If a homeowners' association assessment is paid solely for the maintenance of the association, this is not the sale of a good or service. This situation does not involve a true bargained-for exchange, and the assessment pays for actions that primarily benefit the association, not the homeowners individually. In this situation, the payment of the assessment more closely resembles an investment or joint venture by the homeowners, as opposed to a sale of a service. See *Ortiz Oil Co. v. Comm'r*, 102 F.2d 508, 509 (5th Cir. 1939) (distinguishing between a sale and a joint venture). However, if the assessment pays for goods or services that benefit particular homeowners individually (e.g., landscaping or garbage removal), then this would be the sale of a good or service subject to the credit card surcharge prohibition.


This advisory letter is not an interpretation approved by the Finance Commission of Texas pursuant to Texas Finance Code, § 14.108. If an interpretation approved by the Finance

Chrissy L. Schwennsen
Pulman, Cappuccio, Pullen, Benson & Jones LLP
March 10, 2014
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Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code §1.201(b).

If you have any questions, you may call me at (512) 936-7623.

Sincerely,

A handwritten signature in black ink, appearing to read "Sealy Hutchings", written over the typed name.

Sealy Hutchings
General Counsel
Texas Office of Consumer Credit Commissioner