

community interests

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Health Safety and Welfare Fines Based on Conduct

By Avece M. Higbee, Esq., at the request of Barbara Holland

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Question: I was assessed \$17,500 in health, safety, and welfare fines for alleged assault on the manager and I did not get a hearing before the board of directors to defend my position. What is the process for an association to impose and collect health, safety, and welfare fines?

Answer: While the amount of \$17,500 sounds excessive, associations have the right to impose large fines that are commensurate with the severity of the violation. Conduct like assaulting a manager, if true, certainly could easily warrant a large fine. Regardless of the amount of the fine or the violation involved, the association must follow the governing documents and the applicable laws. Then, the board of directors for the association has some alternatives concerning enforcement depending on if the violation is a violation of a statute or of the governing documents. If health, safety, and welfare fines have been imposed against an owner, failure to pay the fines can result in foreclosure against the owner's unit.

First, there must be a basis in the governing documents or law for a health, safety, and welfare violation to exist. Many times, health, safety, and welfare violations are a result of "bad conduct" like threatening or harassing a community manager or a member of the board of directors. Most associations have rules and regulations prohibiting "bad conduct" and have incorporated language from the harassment statute, NRS 116.31184, which prohibits harassment of a manager, board member, or resident that causes harm or a hostile environment for that person. Thus, the basis for the violation is generally in the rules and regulations.

If the violation is a statutory violation, the association can proceed with an intervention affidavit with the Nevada Real Estate Division, Common-Interest Communities and Condominium Hotels, Office of the Ombudsman (NRED). Here, there may be an informal mediation held for the parties to attempt resolution prior to an investigation to determine if there is evidence supporting the violation of the statute. If the violation is of the harassment statute, the association has the right to report the violation to the police as a criminal matter since the violation of the statute is a misdemeanor.

Second, the association must follow the statutes and established procedures set forth in the association's governing documents. The statutes contain specific requirements before a fine, including a health, safety, and welfare fine, may be imposed: the person has had the applicable rules (or other governing documents) for more than 30 days, the person must be provided with notice of the details of the alleged violation, the proposed action to cure the alleged violation, the amount of the proposed fine, the date time and location for a hearing, photographs if applicable, and time to cure the violation. Additionally, the association must follow whatever additional processes have been established in the association's rules, bylaws, or policies such as sending warning letters, imposing fines established, providing additional compliance time, if any.

Third, the association must hold a hearing unless the person against whom the fine will be imposed waives the right to the hearing or fails to appear at the hearing after proper notice. At the hearing, the person is entitled to due process, which under the statute, includes the right to counsel, the right to present witnesses and the right to present information relating to any conflict of interest of any member of the board of directors. While the board is acting as the judge at the hearing, the person has the


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right to challenge any conflict for fairness purposes. If the person does not appear at the hearing, a hearing does not need to be held. The board should still evaluate the evidence and review compliance with the required process before imposing a fine, especially a health, safety, and welfare fine. The minutes of the executive session meeting should reflect the violation, the evidence reviewed, and the determination made by the board.

Fourth, once the association imposes a fine, the association may seek to enforce payment of the fine through court (after proceeding with the alternative dispute resolution process through the NRED) or by simply recording a lien on the title to the unit (if the owner was the one that committed the violation). The association may not proceed with foreclosure to collect a general fine. The association will likely get paid when the owner determines to refinance or sell the unit. If the fine imposed is for a health, safety, and welfare violation, the association can proceed with foreclosure to collect the health, safety, and welfare fine. The foreclosure process is outlined in the statutes and is the same as that used for nonpayment of assessments. If the owner fails to pay, the association may sell the unit at the foreclosure sale. Should the board determine to proceed with foreclosure for the health, safety, and welfare fine, the owner could pay the fine, attempt resolution with the board, seek bankruptcy protection, or file legal action to try and stop the sale.

Health, safety and welfare violations are serious and thus the association has authority to take serious actions to stop such violations to protect the residents in the community. 



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