

TREETOP VILLAGE CONDOMINIUM INFORMATIONAL LETTER



ASSESSMENTS REQUIRED TO COVER SKYROCKETING INSURANCE PREMIUMS

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By Ryan Poliakoff, Condo Q&A

Dear Poliakoffs,

Recently I received a notice from my condominium association that there is a \$500,000 shortfall in the budget related to our insurance premiums. Starting next month all unit owners will be charged a certain percentage to cover this shortfall. To me this seems not quite right, since we all have paid association dues monthly as expected—how can they now come back to us to charge us more than they were charging us to begin with? Am I wrong on this? It seems like a scam to me. *Signed, R.B.*

Dear R.B.,

Due to a number of market factors, including the Surfside tragedy (the collapse of Champlain Towers South), many insurers have left the Florida market, and the cost of insurance has gone up dramatically. Many of our clients have reported premium increases of hundreds of thousands of dollars. So, if your insurance renews in the summer, what you described is not at all surprising (I have heard multiple reports of similar increases). The association has a statutory obligation to carry insurance, and they have to pay for that premium increase somehow—the only solution is to raise your assessments. This can be accomplished in one of two ways. Either the board can amend the annual budget and collect increased assessments for the rest of the year (which is what it sounds like is happening in your case), or the board can pass a special assessment to collect sufficient funds to cover the shortfall.

You can certainly request to review insurance-related association records, including the cost of the prior policy and quotes and correspondence from the insurance company. This will allow you to confirm the validity of the increase. With that said, there is nothing in your question that is particularly surprising to me, and I have no reason to believe this assessment increase is a “scam.”

I will note that some condominium governing documents contain limitations on the board’s authority to increase the budget or pass special assessments without membership approval, so that’s worth considering. However, it’s unclear what would happen when one of these restrictions conflicts with the statutory obligation to carry insurance. Would an affected association be required to gut the rest of its budget to pay for the increased cost of insurance? Would they stop maintaining the landscaping, or fire the cleaning crew? The association has an obligation to maintain the property, too! Hopefully the membership will be supportive of the board and respect that the board has no option but to secure appropriate insurance, despite the staggering increase in cost.

FINES JUST ONE OF SEVERAL ENFORCEMENT TOOLS AVAILABLE TO ASSOCIATIONS

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Ryan Poliakoff, Condo Q&A

Dear Poliakoffs,

You recently discussed condominium fines. So do I have this correct? In a condominium the fine maximum is \$100 per violation, \$1000 maximum for a continuing violation, and no liens are allowed on the property. So basically the violation, fines and consequently the rules of a condominium are unenforceable and mean nothing if someone wants to just blow off the board as well as their neighbors.

Signed, B.H.

Dear Poliakoffs,

The aggregate fine for a continuous violation of rules and documents for a single violation is \$1000 by state statute. But then what? The rule breaker pays his or her \$1000 and gets to continue with the violation with no future penalties or consequences other than not being able to use common areas "for a reasonable time?"

Signed, N.G.

Dear B.H. and N.G.,

Your questions are directly related, and so I wanted to answer them together. B.H., while you have the specific limits correct, but I think you are looking at the rest too narrowly. And N.G., the payment of a fine does not excuse the behavior.

It is true that, in a condominium, fines are limited to \$100 per violation, up to \$1,000 for a continuing violation, with no ability to lien the Unit for non-payment of the fine. But, that does not mean the fine is not collectable, at all—it just means that a single collections tool (lien and foreclosure) is unavailable. The association can always sue the owner in small claims court to collect a fine—we've done so for clients many times. It could cost thousands in legal fees to get through the small claims process, and a judge might not grant 100% of those fees back to the association if it prevails, so there's a possibility that pursuing the fine will be at a loss. However it will be a major inconvenience for the owner and they are not likely to dodge the fine entirely; and if the association is willing to show that it is serious about collecting fines, it could make owners think twice about violations in the future. So, even without lien and foreclosure as a collection tool, I do think it's ultimately important for condominiums to enforce their fines. Separately, as N.G. notes, in the event that a fine goes unpaid for more than 90 days the association can suspend that owner or resident's right to use the common elements until the fine is paid in full. So, that is an additional motivating tool to get owners to pay.

Importantly, the fact that a fine is issued, whether paid or unpaid; or the fact that a suspension is imposed; does not in any way mean the owner does not have to abide by the violated rule. Even aside from fines and suspensions, the association always has the option to sue the owner in court (sometimes after participating in arbitration or sending a mandatory demand for mediation) and ask a judge to issue a court order enjoining the behavior. That court order would then be enforceable, and a judge could even hold an owner in contempt for continuing to violate the covenants or rules. The main barrier that I find to associations pursuing violations in court is the expense of enforcement, which can be substantial; but the association is entitled to recover a large portion of its legal fees if it prevails in a legal action, and this is ultimately just part of the business of an association—rules enforcement is part of the association's duties, and there are only so many enforcement tools available.

So, the fining limitations do not doom a condominium association to ignoring its violators. Fines are just one piece of the puzzle, and the association needs to consider using all available tools to rein in bad behavior.

Note, for those who live in communities governed by HOAs, that while there is a \$100/\$1000 limit in the HOA Act as well, those limits only apply if the governing documents do not allow for greater (or no) limits. So, you will sometimes see an HOA where the fine is much more than \$100, and where the aggregate fine is infinite. I will say that I would be very skeptical that a judge would ever approve a huge HOA fine (\$50,000 or \$100,000, for example), but it still gives the HOA more latitude. And, because fines of \$1,000 or more in an HOA can be subject to lien and foreclosure, that gives HOAs an additional and more effective collections tool.

******Ryan Poliakoff, a partner at Backer Aboud Poliakoff & Foelster, LLP, is a Board Certified Specialist in condominium and planned development law. This column is dedicated to the memory of Gary Poliakoff, pioneer of the community association legal industry, tireless advocate, and author of treatises, books and hundreds of articles. Ryan Poliakoff and Gary Poliakoff are co-authors of New Neighborhoods—The Consumer's Guide to Condominium, Co-Op and HOA Living. Email your questions to condocolumn@gmail.com. Please be sure to include your location.***