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## Time to Check Whether Your Condo/HOA Fines and Fees Need an Update

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Much like your community association lawyer and [manager](#) might raise their rates over time, you should probably review any [fines](#) and [fees](#) your condo/HOA charges to see if they're so low they don't do what they're supposed to do anymore.

Here's why.

### Unless Your Hands Are Tied

Let's start with a distinction: Fines and fees are likely different things, though there's probably overlap between them. Fines are what's typically assessed after a [violation](#) has been confirmed. Fees are typically costs associated with tasks or amenities. For instance, your state may permit you to charge a fee for preparing a seller's packet to provide to buyers. It may also permit you to charge a fee to use your gym or host an event at the clubhouse.

With that in mind, before you investigate or make any changes to fees or fines, check your state laws first. They may restrict your ability to act.

"In Florida, a fine is dictated strictly by statute," reports Zuly Maribona, LCAM, the Bonita Springs, Fla.-based senior vice president and partner at KW Property Management who oversees the company's southwest Florida, Jacksonville, Orlando, Tampa, and North Carolina operations. "State law says fines can't exceed \$100 per violation per day, not to exceed \$1,000 in total, for both condos and HOAs. Once that maximum has been met, you can record a lien against the property if the violation hasn't been cured, and you can assess late fees and finance charges. But you can't increase the actual fine."

Florida law also affects some fees that can arise at condos and HOAs. "In the condo statute, there are limits on what fees can be charged," says Maribona. "Condos can't charge a move-in or move-out fee for [renters](#) or owners. They can charge a security deposit but not a nonrefundable fee. They can charge for an application fee of up to \$150. So they're very limited in what they can and can't charge.

"Where exceptions can come in is where associations have [amenities](#), such as a clubhouse," she adds. "That's where they can charge a fee."

On the other hand, in California, the limit is reasonability. "Fines and fees have to be reasonable," reports Greg Smith, CMCA, AMS, PCAM, director of leadership

development at Associa®, a community association management company headquartered in Northern California.

### **Are They Meeting Their Purpose?**

If you have any leeway in whether you can adjust your fines or fees, step back and evaluate what they're intended to accomplish. "Fines and fees are meant to be an effective deterrent to behavior that violates the governing documents," says [Susan Hawks McClintic](#), managing shareholder and the chair of the community association transactional practice group at the law firm of Epsten APC in San Diego. "If the amount is too low, the fines or fees might become more of a use fee than a deterrent.

"Also, the amounts that are reasonable and effective for one community may be too high and overly punitive for another community," she adds. "Fines and fees should also be reasonable based on the type of violation. Some violations are more severe than others, and the fines should reflect this difference in the violation."

McClintic also sees some clients assess fees related to violations, which are permissible. "I've seen a couple of associations that, when there's a violation, they attach some fees to it," she says. "Maybe the fee is for management time or other steps in the process. Make sure those are reasonable, too."

Whether you assess fees or fines or both, it's important to review them occasionally. "I think boards should be reviewing their fee or fine schedule just like their [rules](#) to see if they're effective or necessary," says Smith. "I think they should do that every three to five years.

"For instance, \$10 a day doesn't mean anything to some people," he notes. "In the homeowner's mind, paying a \$25 fee to park their car where they're not supposed to be might be totally worth it to them.

"The goal of fines isn't to generate revenue; it's to obtain the desired behavior," adds Smith. "If the fine isn't producing the desired behavior, it's ineffective. If you assess it often, perhaps your owners don't want it in place anymore or the amount you're assessing isn't adequate."

McClintic has seen a similar attitude. "I call it sort of a use fee," she says. "Owners think, 'I can keep doing this if I'm willing to pay my \$25 or \$50 a month.' We sometimes see that in [architectural violations](#). Owners think: 'It's going to cost me a lot of money to change this but only \$50 a month if I don't; it's way more expensive for me to fix the violation, plus I like this thing the way I have it even though it's a violation.

"California associations do have the right to make fines painful, but they just have to be reasonable," she adds. "One thing I suggest to my clients is that they look at cities and counties to see what they charge for similar violations."

Also compare the amounts to that in associations around you, suggests Peter Gray, president of Pyramid Real Estate Group, which manages 4,000 units in Connecticut, and a real estate commissioner for the Connecticut Department of

Consumer Protection. "I know that most of our clients seem to charge similar fees," he says. "When one fee is out of whack with what our other clients charge, we suggest they take a look at that with the help of a legal advisor."

### **Maybe Your Fee Isn't The Problem**

Maribona agrees that it's wise to evaluate your fines and fees—to a degree. "In my opinion, boards should do this yearly or every other year," she states. "It shouldn't be very cumbersome to do a yearly review; boards can often do that through their budgeting process and say, 'We're happy with this fee' or 'We went to look into fee this further.'"

That said, Maribona says that rather than upping a fine, you may want to just get better at enforcement. "What I see is that a lot of associations don't fully understand the entirety of the fining process," she explains. "Some associations want to take a hard stance and fine owners for every violation right away, and others want to be warmer and friendlier."

"I suggest boards find that happy middle, but that becomes the challenge for associations," says Maribona. "So it may not be that your fines need to be increased but that you need better enforcement that's handled differently, and the [process needs to be better explained to homeowners](#). Enforcement sometimes becomes a very complex process when it shouldn't be."

Gray sees a similar pattern among clients. "We do want a penalty to be painful enough, but if people ask for it to be waived, most associations will usually do that," he explains. "We do recommend a process, and I believe it's important for boards to stick to the process and have consistency."

McClintic also agrees the entire violation process can often be improved instead of relying on fines. "A lot of violations come up in architectural situations that drag on forever," she notes. "The mistake we see associations make is to keep fining but not to take the next step to force the situation to be resolved. They're thinking they're doing enough, but there comes a point where you actually need to do something else."

"Some associations impose continued or monthly fines until violations are corrected," she notes. "These types of fines can be effective. But if they're not effective after a couple of months, consider the next steps in the enforcement process rather than just continuing to impose fines with no resolution to the underlying violation."

"Here in California, we have other steps boards need to go through," says McClintic. "That starts with [internal dispute resolution](#), which means the board sits down and talks to the person, and after that it's mediation or arbitration. I sometimes have to tell a board, 'You've allowed this situation for two years; you're going to lose your right to do something about it unless you go to the next level.'"