

PASSED: HOUSE BILL 26S01

EDITS TO THE COMMUNITY
ASSOCIATION ACT AND
CONDOMINIUM ACT

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The legislature has amended the fine section of the Community Association Act (CAA) and the Condominium Act (Condo Act) with the passing of House Bill 26S01 (HB 26S01), the "Association Lien Amendment." In particular, HB 26S01 amends sections 57-8-37 and 44 of the Condo Act and sections 57-8a-208 and 301 of the CCA. Perhaps most importantly, HB 26S01 clarifies when an association of unit owners truly has a lien for an unpaid fine. The bill also provides some procedural requirements that a board must give a homeowner before imposing a lien and makes several technical changes.

Fines, under the Condo Act, may become part of a lien only if several conditions are met. First, the fines must be properly levied, which means the fine may only be for an offense specifically listed in the governing documents; the notice must give the owner at least 48 hours to cure; the fine amount must be in an amount specifically provided for in the governing documents; and the fine amount cannot exceed \$500 per month per offense. Next, the association must provide an opportunity for the owner to dispute the fine through an informal hearing within thirty days from the date the fine is assessed. Finally, before the fine can be included in a lien, 180 days must elapse from the later of either (1) the informal hearing being held and a final decision being made by the association or (2) the time to request an informal hearing expires without the unit owner making a request. So, for example, if the unit owner makes no request, the thirty day period to request a hearing elapses, and then an additional 180 days go by, only then can the association include the fine in a lien.

Fines under the CCA have similar requirements to fines under the Condo Act but with several key differences. First, so long as the fine amount is specifically enumerated in the governing documents there is no \$500.00 per month maximum on the fine. The CCA also allows fines that are "commensurate with the nature of the violation." It is unclear, however, whether a fine "commensurate with the nature of the violation" may exceed an amount already fixed in the governing documents. The safe alternative is to not exceed the amount fixed in the governing documents and only use the "commensurate with the nature of the violation" amount if there is no set fine amount in the governing documents.

Imposing fines is one of the most technically challenging areas of the CCA and Condo Act and many pitfalls exist. Associations should review their documents carefully and consult with their professional managers and/or legal counsel before imposing fines.