



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject: Necessity of photographic evidence of a violation	Advisory No. 14-03-116	2 Pages
	Issued By: Real Estate Division	<i>JD</i>
	Amends/Supersedes	N/A
Reference(s): NRS 116.31031(4)	Effective Date: September 3, 2014	

QUESTION PRESENTED:

When is an association required to provide photographic evidence of a potential violation of the governing documents in accordance with NRS 116.31031(4)?

SHORT ANSWER:

Photographic evidence of a violation must be provided prior to imposing a fine against a unit owner. If an association has a practice of sending courtesy notices of a violation without any intention of imposing a fine at that time, a photo would not be required.

ANALYSIS OF THE ISSUE PRESENTED:

The 2011 Nevada Legislature made changes to NRS 116.31031(4), effective January 1, 2014, such that associations must now include in the notice of the violation, photographic evidence of the violation prior to imposing a fine for noncompliance.

NRS 116.31031(4) reads:

4. The executive board may not impose a fine pursuant to subsection 1 unless:
 - (a) Not less than 30 days before the alleged violation, the unit's owner and, if different, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the governing documents that form the basis of the alleged violation; and
 - (b) Within a reasonable time after the discovery of the alleged violation, the unit's owner and, if different, the person against whom the fine will be imposed has been provided with:
 - (1) Written notice:

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- (I) Specifying in detail the alleged violation, the proposed action to cure the alleged violation, the amount of the fine, and the date, time and location for a hearing on the alleged violation; and
 - (II) Providing a clear and detailed photograph of the alleged violation, if the alleged violation relates to the physical condition of the unit or the grounds of the unit or an act or a failure to act of which it is possible to obtain a photograph; and
- (2) A reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing.

For the purposes of this subsection, a unit's owner shall not be deemed to have received written notice unless written notice is mailed to the address of the unit and, if different, to a mailing address specified by the unit's owner.

An issue was brought to the Division regarding when the photographic evidence required by NRS 116.31031(4)(b)(1)(II) must be provided. NRS 116.31031 provides the minimum standards an association must follow prior to imposing a fine against a unit owner. Many associations have a procedure in place for enforcement of the governing documents that exceeds what is required by law. For example, associations may provide courtesy letters identifying violations of the governing documents which in many cases result in the violation being corrected leaving the association with no need to take additional action. In such cases it is not necessary for the association to provide photographic evidence of the alleged violation. The photographic evidence is required prior to the association imposing a fine. It is not required if the association is providing courtesy letters in advance of any procedure to seek a fine.

ADVISORY CONCLUSION:

NRS 116.31031(4) serves to protect a unit owner by requiring specific photographic evidence of a violation when the association is attempting to collect a fine. When correspondence from an HOA only serves as a notification of a potentially finable violation without any intention to fine at that time, photographic evidence is not required to be provided. Prior to the association taking action to impose a fine against a unit owner, the photographic evidence would be required.

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