

Commissioners:

Pursuant to SB 72, you have recently been tasked with adopting regulations establishing:

1. The **criteria used in determining whether a violation poses** an *imminent threat* of causing a *substantial* adverse effect on the *health, safety or welfare* of the units' owners or residents of the common-interest community;
2. The **severity** of such violations; and
3. **Limitations** on the amounts of the fines.

SB 72 was a bill carried by the Division, and as such, we believe that some background surrounding the issue may be beneficial. Currently, the Division receives several inquiries every month asking whether a certain act committed by an alleged violator is worthy of a health, safety, or welfare (HSW) fine. These inquiries stem from both unit owners and board members. HSW fine amounts must be commensurate with the severity of the violation and can exceed the \$100 cap placed on all other violations of an association's governing documents. HSW fine amounts often range between \$500 and \$5,000, despite having no cap in law. If these fines go unpaid, the associated lien is also foreclosable.

Without any clear definition or standards in the law regarding the types of violations that may fall into the HSW realm, the Division has seen everything from the act of raising one's voice at a meeting in a threatening manner, to shooting fireworks towards other units, fall into this category. The Division hopes the Commission can establish a foundation which could be used by the industry to better understand what is reasonably expected to be categorized as a HSW violation. Having this additional clarity should assist boards as they attempt to determine how to address these types of violations, hopefully resulting in unit owners across the State being treated fairly and somewhat uniformly.

When addressing "health, safety and welfare," no other governmental entity within Nevada has redefined the basic understanding of these terms. Each entity has instead taken the standard definitions and simply applied them to their own agency's needs (see links at the end of this document). As such, it may be beneficial to first look at the standard, accepted definitions of each pertinent word:

- *Imminent* – immediate.
- *Threat* – intention to inflict evil, injury, or damage.
- *Substantial* – large in scale.
- *Health* – an individual's continuing physical, emotional, mental, and social well-being.
- *Safety* – the state of being reasonably free from risk of danger, damage, or injury.
- *Welfare* – the well-being of individuals resulting from their physical environment.

Federally, the [CDC](#) has created housing regulations pertaining specifically to health, safety and welfare, emphasizing that an individual's living environment should at least provide for some of the following: protection from **excessive noise**; protection against **disease**; protection against **injury**; protection against **fire**; protection against **noxious fumes**; and adequate **privacy**. We believe that these basic expectations could further provide a direction of emphasis for the Commission to consider moving forward.

On the following page, the Division has also provided some very rough, sample language for the Commission to review.

## **Proposed language for NAC 116 – Health, Safety, Welfare**

1. If a violation of the association’s governing documents poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units’ owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$5,000 for each violation.
2. A violation of an association’s governing documents shall not be determined to constitute an imminent threat of causing a substantial adverse effect on the health, safety, or welfare of the units’ owners or residents if it consists solely of:
  - (a) Using vulgar, profane or abusive language;
  - (b) Voicing opposition to, or support for, any matter affecting the common-interest community;  
or
  - (c) Any other lawful act committed by a unit’s owner, tenant or invitee prohibited by the governing documents, NRS 116, this chapter or any other applicable federal, state or local laws or regulations.
3. Nothing in this section precludes the association from establishing behavioral, etiquette or anti-bullying policies in accordance with the association’s governing documents which could result in a fine limited to the \$100 cap provided in statute.
4. As used in this section, “imminent threats” means those acts which have the potential of causing a direct and immediate substantial adverse effect on the health, safety or welfare of the units’ owners or residents of the common-interest community, including:
  - (1) A lack of care or neglect which directly and immediately places one or more units’ owners, residents, or invitees within the community in danger or direct threat of being harmed.
  - (2) An intentional act which has the potential of causing immediate bodily harm to one or more units’ owners, residents, or invitees within the common-interest community.

Links:

[Southern Nevada Health District Regulations](#)

[Sparks, NV Health and Welfare](#)

[Las Vegas, NV Health and Safety](#)

[Boulder City, NV Building and Safety](#)