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## Is It Normal for a Lakefront HOA to Deal with Lake Water Quality?

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A Virginia HOA is adding some of its own funds to money from government entities, and it's fundraising, to control algae on a lake it borders. Is that something lakefront HOAs typically handle? Would they have the power to spend owners' money on such an effort?

Here's what you need to know about the limits of HOAs' spending and the perils of fundraising.

### Your State and Documents Rule

This is an issue that will likely be state specific. In addition, if your community is on a waterway, you'll need to read your governing documents to know how much authority your association has over its maintenance.

"I've worked with a few associations that border a lake or have a lake, and they've tended to be rural," says Alex Noland, CCAL, founder of Noland Law PC in San Francisco, which represents 200-plus community associations throughout California. "What the board can do would get down to what's the association's obligation under the governing documents and whether there are any regulatory obligations."

However, Janet Oulousian Aronson, a partner at Marcus Errico Emmer & Brooks in Braintree, Mass., who is licensed in that state, in addition to Rhode Island and New Hampshire, takes a little more expansive view. "I do have associations on lakes and ponds," she explains. "I'd say that if something like algae impacts the market value of the units in the association, then dealing with it may be a legitimate expense.

"If this lake algae is a hazard, or smells, or something like that, I'd think it's detrimental to the association and units," she notes. "So I'd say that's probably a legitimate expenditure. It's no different than if there's a development on an abutting parcel and the board and owners think the development is going to have an adverse impact on the association.

"Maybe it's going to be a commercial plaza that's being developed, and the traffic is going to have a detrimental impact," explains Aronson. "To the extent that something has a detrimental or just an impact on the community, I think it's reasonable to expend association funds."

## **Water, Water Everywhere**

But government entities may also come into play. That's the case in Florida, with its many lakes and canals. "Sometimes, responsibilities are split," says 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.

"In some cases, community development districts are involved in water management," she states. "They're developed to oversee the roads, gatehouses, and lakes. If that's the case, the CDD is responsible for the lake quality.

"In other cases, all those things are the responsibility of the association," says Maribona. "Then, the association is responsible for things like water quality and fish quality, and they have to address things like lake-bank erosion. That costs a lot of money. It's tens of thousands of dollars associations have paid over time, sometimes hundreds of thousands.

"That would be addressed in your documents," she notes. "I think if that responsibility isn't in your documents and there's no CDD, how to handle this issue would be a conversation the board would need to take up with their association attorney. If water quality is going to affect the homes around the lake, the association may need to take action to safeguard the homes around it. But they'd need an opinion by legal counsel before acting."

## **And Then There's Colorado**

"Colorado doesn't have lakes," says Elina Gilbert, a shareholder at Altitude Community Law in Lakewood, Colo., who has specialized in community association law for 23 years. "We have reservoirs. They're not real lakes. There are some communities they call lake communities, but I laugh at that because I'm from Michigan."

That said, this isn't often an issue for Colorado HOAs. "In one community I know of, the lake is owned by a reservoir company, and the association has use rights on the lake for the surface water. It's bizarre how it's set up.

"I think in most cases, these reservoirs aren't owned by the associations, and they all have some sort of use or easement agreements in place," states Gilbert. "So here, water quality isn't going to be an association function. It's usually a function of a metropolitan water district or something like that."

## **What About That Fundraising?**

As a general rule, there's nothing really wrong with an HOA fundraising for this type of issue. "I don't think there's any prohibition against that," says Aronson. "I don't see anything wrong with it, but maybe the association should ask members to handle it to keep some separation between the HOA and the fundraiser."

Gilbert concurs. "I tend to agree that the association should keep some distance from fundraising, although it's not unlawful per se for the associations to do fundraisers," she

says. "That happens for various reasons. I know of associations that accept donations for their holiday party. I don't particularly love it, but it's not unlawful.

"It also depends on what they're raising funds for," adds Gilbert. "If it pertains to the lakes and those lakes are considered common area, I don't know if I want homeowners raising funds for common area maintenance because that's an association responsibility. Then the board might be accused of not meeting their duties. If it's not common area, then it might be OK."

Noland would also prefer that fundraising is done only at arm's length from the association. "HOAs are typically formed to manage, maintain, and administer common elements," he says. "So if there's a lake that maybe borders the community or is nearby, but it's not the obligation of the HOA to maintain it, I don't know if they should expend resources to do that.

"Maybe they should be telling the owners to do what they want on the fundraising," he adds. "If we as an association have no control, authority, or obligation, why are we dealing with it, even through a fundraiser?"

"I consider this similar to challenges some condos have in my area with homeless issues," says Noland. "A new 'navigation' center for homeless people was proposed near one of my condo clients. Owners and residents were all up in arms, saying the facility would be right by their property.

"But based on their governing documents, they had no authority to address the issue as an association," he recalls. "So it wasn't a proper use of HOA funds to hire a lawyer to try to fight the proposal.

"I had to tell them, 'Don't touch this issue, because once you touch these things, there can be unintended consequences,'" notes Noland. "I tend to be more a conservative attorney, and I often advise my clients to stay in their wheelhouse."