

Statutory Requirements for Disciplinary Hearings and Notices

Jay W. Hansen, Esq. and Jodi A. Konorti, Esq.

When it comes to associations conducting disciplinary hearings, it is essential for both boards and management companies to be aware of the requirements set forth in Civil Code Section 1363(g) & (h). These are not just incidental statutory requirements, because subparagraph (h) provides that, if an association fails to comply with these requirements, then any penalty the board seeks to impose is invalid. While the requirements are not unduly burdensome, it is important to know what they are, to use form notices that contain all of the essential elements and to send the appropriate notices within the time periods required by law. If an association has other governing document requirements that are more specific, then those requirements also need to be met.

Requirements Prior to a Hearing

To call an owner to a hearing:

1. There must be a written notice.
2. The notice must be sent to the owner by personal delivery or first class mail.
3. The notice must be sent out at least 10 days before the meeting.
4. The notice must contain at least, the date, time, and place of the meeting, the nature of the alleged violation and a statement that the member has a right to attend the meeting and may address the board in the meeting.
5. The board must meet in executive session if the member requests it.
6. We suggest that the notice should contain the maximum penalty or penalties that the board might impose at the hearing and the specific CC&R, Bylaw or rule section and at least a general description of the requirement that the owner allegedly violated.

Requirements for Adopting Most Rules including Fines and Penalties

For the board to levy any type of monetary fine or other penalty against an owner:

1. The board must have previously adopted a schedule of monetary penalties and distributed it to all owners.
2. The board must have previously given notice to all owners if the schedule of fines or penalties changed.
3. The board must comply with any other requirements of the governing documents.
4. The board must follow the 30-day comment period and rule adoption procedures in Civil Code sections 1357.120 and 1357.130 to the extent they are applicable and if they were enacted after January 1, 2004.
5. The board must distribute a copy of any applicable rule change to each member by personal delivery or first class mail within 15 days after the board adopts them.

Requirements after a Hearing to Impose Discipline

If the board decides to impose disciplinary action on a member:

1. The Board must give the member written notice of the disciplinary action imposed.
2. The Board must send it to the member by personal delivery or first class mail. and
3. The Board must send this notice within 15 days after the board's action. (We believe the legislature was assuming and intending that the 15 days would run from the date of the hearing, not from action taken days later.

Failure to Comply with Statutory Requirements

If the board fails to follow any of the above requirements, Civil Code Section 1363(h) states that the disciplinary action is not effective. Hence, it is critical to follow these requirements if the association wishes to have an enforceable disciplinary procedure that also acts as an effective deterrent.

Attached hereto are sample notices the Board must send to the member. Each notice is annotated with footnotes stating whether a provision is mandatory or recommended.

Disclaimer: The information in this document is believed to be accurate as of the statutory requirements in effect as of January 1, 2009. The California Legislature has changed HOA statutes repeatedly and significantly. Thus, you should check the statutes and with your attorney before relying on this information.