

## Disciplinary Hearings Deconstructed

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Although disciplinary hearings are common occurrences for most community associations, a little guidance is always helpful. Below is a brief guide on noticing and holding disciplinary hearings in accordance with Civil Code § 1363(h). When noticing and conducting a hearing, it is also important to check the association's governing documents to determine if any additional steps need to be taken beyond those set forth in the statute. The board should be careful to act in accordance with both the requirements of the statute and the governing documents, and if the two differ, the stricter requirements should be adhered to.

### Notice of Hearing (Civil Code § 1363(h))

If the board of directors wants to consider or impose discipline on a homeowner for a violation of the governing documents, it must first provide written notice of a hearing. The written notice must be sent via first-class mail or by personal delivery at least ten days prior to the hearing. Some community associations' enforcement procedures require notice in excess of ten days. Under such circumstances, it is recommended that the board provide notice in accordance with the longer notice requirement.

The notice must contain, at a minimum, the following information: (1) the date, time, and place of the meeting at which the hearing will be held; (2) a description of the nature of the alleged violation(s); and, (3) a statement that the homeowner has a right to attend and may address the board. A notice should state the specific provision of the governing documents that has been allegedly violated. To satisfy due process, the notice should also state the proposed disciplinary action – for example, that the owner may be assessed a fine in accordance with the association's fine policy. (Note that the association must have a published fine schedule before fines can be imposed). The notice should state the potential amount of the fine, and if the fine policy allows additional fines for repeated or continuing violations, these fine amounts should also be noted. If the hearing has been called to determine whether or not to assess an owner

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for the cost of repairing the common area or for some other reimbursement, the notice should contain the monetary amount that may be imposed. If invoices exist, the board should consider including them with the notice. To the greatest extent possible, the notice should explain the fine amounts and other discipline that might be imposed at the hearing.

### Hearing Procedure

If the homeowner who is subject to discipline requests that the hearing be held in executive session, the board must do so. Although not required by statute, it is usually better for the board to hold a disciplinary hearing in executive session regardless of whether or not the owner requests it.

When the homeowner arrives at the meeting, the board members and anyone present at the hearing (*i.e.*, the community association manager) should introduce themselves. The homeowner should introduce himself or herself and any other witnesses or individuals attending on the homeowner's behalf. (Witnesses should only be allowed to attend the hearing for the brief period of time they are providing information to the board.) The homeowner should be informed of the facts and circumstances of what he is being accused of, as well as the specific provisions of the governing documents the homeowner has allegedly violated.

The board should describe the proposed disciplinary action, such as the suspension of membership privileges or the amount the owner may be fined, if found responsible. If there is some other basis for the fine imposed (other than just the fine schedule set forth in the association's enforcement policy), such as invoices for repair of the common area, the homeowner should be provided with copies of such documents at the hearing, if they were not included with the notice.

Next, the parties should present their case. On behalf of the community association, an individual and/or witnesses will describe what happened (the discovery of the problem). Any requests to the owner to take corrective action, such as removing illegal structures or submitting an architectural application, should be summarized, as well as the homeowner's refusal to comply with such requests. Evidence should also be presented to show exactly how the homeowner's conduct violates the governing documents.

The homeowner may present any evidence, testimony, discussion, or statements on his/her own behalf. Homeowners should not be allowed to question the board, but should be allowed to question anyone presenting evidence on behalf of the community association. The board can question the homeowner if it so desires. Once the homeowner's presentation is concluded, the homeowner and witnesses will be excused, and the board should adjourn into executive session, if it has not already done so, to make its decision. If the board decides to take some disciplinary action based on authority set forth in the governing documents, it should specifically vote on taking such action in accordance with the applicable provision. A brief record should be kept to describe what occurred at the hearing.

If the homeowner fails to attend the hearing after proper notice has been provided, the board should still conduct the hearing, consider the evidence, and make a ruling on whether discipline should be imposed.

#### Notice of Ruling (Civil Code § 1363(h).)

If the board decides to impose discipline on the homeowner, it must provide written notice of the disciplinary action. The notice of the board's ruling must be sent by first-class mail or personal delivery within fifteen (15) days following the action. If a written notice of ruling is not sent within this time frame, the disciplinary action will not be effective. If the association's governing documents require notice of the board's ruling to be provided within a shorter timeframe, the shorter timeframe should be followed.

A notice of ruling should include the following: (1) the date of the hearing; (2) a description of the alleged violation; (3) any evidence considered by the board in reaching its decision; (4) the board's conclusion based on the evidence; (5) the disciplinary action to be imposed; and (6) the date the disciplinary action will be imposed, to be no less than five days from the date of the notice of ruling. (See Corp. Code § 7341(c)(2), (3).)

This article provides a general guide to noticing and conducting disciplinary hearings in accordance with Civil Code § 1363(h). Sometimes boards may need additional guidance when special circumstances arise. For example, what if the homeowner wants to bring an attorney to the hearing? What if a witness wants his/her testimony to remain confidential? Can the board proceed with the hearing if the homeowner subject to discipline cannot confront his accuser? When these issues arise, it is best for board to contact legal counsel to obtain more specific guidance on how to proceed.