

CLIENT ADVISORY

AN INFORMATIONAL ADVERTISEMENT

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The Latest in Rule Enforcement — Notice Requirements for Association Disciplinary Action

The Davis-Stirling Act has been amended to require that notice be given to members of meetings at which discipline against them will be considered or imposed. Notice of the action must also be given following the meeting. Any disciplinary action which does not comply with the statute will be void. The time periods required for these notices were set and amended in the same legislative session.¹ **Before disciplinary action against a member may be taken, a written notice must be given by personal delivery or first-class mail at least 10 days before the meeting.**

What information must be included in the notice?

1. The date, time and place of the meeting;
2. The nature of the alleged violation for which the member may be disciplined; and
3. A statement that the member has a right to attend the meeting and address the Board.

What does the law mean by disciplinary action?

Since “disciplinary action” is not defined in the statute, there will be questions raised about when compliance is required.

1. A fine for violations of governing documents and rules is the most common disciplinary action. But does the notice requirement apply to recurring or continuing violations? Must hearings be held for repeat offenders? An Association should err on the side of additional notices and hearings. This documentation will be invaluable if your Association must go to court. If the offense is a continuing violation, such as an architectural violation, one notice should be sufficient, if the member is on notice that the fine may continue until the violation is corrected. If the fine is for repeat offenses of the same type, such as failure to clean up after a pet, or loud parties, separate notices should be given since the violations occurred as single, distinct events. A new notice should be given for any fine not included in the original notice.

2. A suspension of a member’s right to vote or use recreational facilities is a disciplinary action. The suspension must be done in good faith and in a fair and reasonable manner to comply with the requirements of Corporations Code Section 7341. Your governing documents should contain a procedure for and time limits on suspensions of member’s rights. If the Corporations Code’s notice requirements are followed, the actions of a corporation will be deemed fair and reasonable. The time periods in the Corporations Code are different from, and we do not yet know how they will be affected by, the new notice requirements of Civil Code 1363 (h).

What notification is required before a car may be towed?

It is not clear if the towing of a vehicle would be considered a disciplinary action subject to the new notice requirements. Legislative history shows no intent to impair an Association’s right to tow cars under California Vehicle Code Section 22658.2 entitled “Removal of

vehicle from common interest development.” However, we cannot predict how a court might rule. The towing statute has its own due process requirements, including requirements for warning signs. The Vehicle Code requires no notice prior to removing vehicles parked in a marked fire lane, within 15 feet of a fire hydrant, in a handicapped parking space without authorization, or which interfere with entrance to, or exit from the community or any separate interest in it.

When a Board encounters any parking or vehicle violations that do not fall under the Vehicle Code’s towing statute, for example, fines against owners of prohibited commercial vehicles or inoperable vehicles, we recommend absolute compliance with the new notice and hearing requirements and its governing documents before a vehicle is towed.

What notices of disciplinary action must be given to tenants?

The law does not require that notice of disciplinary action be given to non-members.

What is required after a board reaches a decision to take disciplinary action?

The Board must notify the member of its action personally or by first class mail within 15 days. If the Board fails to give notice 10 days prior to the meeting, or this second notice after its action, the only statutory penalty is that the disciplinary action shall “not be effective against a member.” Your governing documents may contain additional restrictions on the effective date of the action.

What other Davis-Stirling Act limits are there on imposing a fine?

1. The rule or restriction which has been violated must be reasonable.
2. The Board must first adopt a policy imposing monetary penalties and fees for violation of the governing documents. The monetary penalty and fee schedule must be distributed to each member, by personal delivery or first-class mail upon its adoption and whenever the penalties and fees are changed.
3. A fine may not be imposed as a foreclosable lien.
4. A fee imposed may not exceed the amount necessary to defray the costs for which it is levied.

Why does the legislature care about protecting owners who violate CC&R’s and rules?

The California Association of Realtors (CAR) convinced the legislature that the pocketbooks of common interest community owners need protection and that a four day advance notice of hearing based on the minimum notice for a board meeting is unreasonable. These new requirements are the legislature’s effort to apply the Constitutional safeguard that a person not be deprived of life, liberty or property without due process, to everyday life in a common interest community.

¹ Assembly Bills 1823 and 2284, amending Civil Code Section 1363 (h), effective January 1, 2001