

CLIENT ADVISORY

AN INFORMATIONAL ADVERTISEMENT

EPSTEN GRINNELL & HOWELL APC
ATTORNEYS SERVING COMMUNITY ASSOCIATIONSSM

• San Diego County • Greater Inland Empire • Imperial Valley
• Coachella Valley • Southern Orange County
• Other California Communities

800.300.1704

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

The Davis-Stirling Act requires that notice be given to members of meetings at which discipline against them will be considered or imposed.¹ Notice of the action taken against the member must also be given following the hearing. Any disciplinary action which does not comply with the statute will be void. **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 the CC&R’s or 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 as this extra documentation will be invaluable if your association ever goes to court to collect the fines or to defend its actions. 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 and if the Association’s enforcement policy provides for continuing fines. 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 the 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 as well as Civil Code §1363 (h). The governing documents should contain a procedure for and time limits on suspensions of a 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 notice requirements of Civil Code §1363 (h) so both should be followed.

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 entitled “Removing of Vehicles from Private Property.” However, we cannot predict how a court might rule. The towing statute has its own due process requirements, including requirements for warning signs and notice under certain circumstances.

When a board encounters 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 the 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 provide the member with written notice of its imposed discipline by personal delivery or by first class mail within 15 days of its action. If the Board fails to give notice 10 days prior to the meeting, or the 15 day notice after its action, the only statutory penalty is that the disciplinary action shall “not be effective against a member.” The 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 legislature believe that the wallets of common interest community owners need protection and that anything less than 10 days advance notice of a hearing is unreasonable. These 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 California Civil Code §1363 (h)