HOA Homefront

#243 HOA Homefront – No Kangaroo Courts Allowed - Disciplinary Hearings

By Kelly G. Richardson, Esq.

If everyone followed the Golden Rule ("do unto others…"), association disciplinary hearings would be rare. Unfortunately, hearings are a necessary, regular, and unpleasant board responsibility. These hearings are governed by Civil Code 5850 and 5855, which establish a simple system. The process begins with a written notice to the homeowner at least ten days before the hearing, informing the homeowner of the date, time, and place of the meeting, the nature of the alleged violation (or the nature of the damage to the common area), and notification that the member may address the board at the meeting. Within 15 calendar days, the association must in writing inform the member of any discipline imposed. The process must be followed, because procedural violations invalidate the disciplinary action (Civil Code 5855(d)).

> NOTE – Since 2014, this process must also be followed when associations seek to charge a member for the cost of repairing common area damage caused by the member (or member's guest or tenant).

Sometimes "due process" is erroneously invoked regarding HOA hearings. The required "process" is simply that specified in the statute. So, homeowners do not have the right to be represented by counsel (HOA counsel often also isn't attending), cross-examine witnesses, confront their accuser, or have a jury of their peers. These are not public court proceedings but are private meetings between neighbors addressing a community problem. Homeowner rights in these hearings are what the statute says they are.

Sometimes hearings are canceled because the accused member is unable to attend the hearing, and the board erroneously thinks the member must be present. The law requires homeowners have an opportunity to attend, not that they must attend. If the member has a legitimate reason for not attending and the issue is not urgent, postponing the hearing might be a positive good will gesture. However, postponement is not required.

A hearing is necessary before discipline or a reimbursement assessment can be imposed. Some associations send violation notices to owners, with a notification that the owner can demand a

hearing. This is incorrect, because the law requires a hearing, regardless of whether the member demands it. If the member fails to attend or respond, the hearing may be quite short – but it must happen if the board is imposing any discipline.

The association has many options other than fines. It can take an action which is not discipline, such as warning the member, censuring the member, or asking for a meeting. Other disciplinary options include suspending amenity rights, or in gated communities temporarily disabling transponders (forcing the errant owner or owner's tenant to check in at the guard gate instead).

One myth is that, if a member demands a neighbor be disciplined, the HOA must take action. However, some complaints are difficult to confirm, and some violations may be technical or minor. Not every allegation requires HOA action. Some violations may merit a non-disciplinary approach. Remember, the Business Judgment Rule also applies to disciplinary actions. Neighborhood justice should be dispensed calmly, consistently and compassionately.

To reduce hearing myths and mistakes, consider adopting a reasonable hearing policy. That policy can address how the HOA conducts hearings and inform the members called to them, toward a fairer process. A firm yet fair process helps the credibility of the association governance.

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