

RESOLUTION 08-01-2008

DIGEST

Homeowner Associations: Notice Requirements for Disciplinary Proceedings

Amends Civil Code section 1363 to require homeowner associations to permit responses to mailed notices of disciplinary proceedings as set forth in Code of Civil Procedure section 1013.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 1363 to require homeowner associations to permit responses to mailed notices of disciplinary proceedings as set forth in Code of Civil Procedure section 1013. This resolution should be approved in principle because it assures that due process rights are protected within the homeowner association dispute context.

As proponents have highlighted, there is no predictability as to when a homeowner may receive written notice of homeowner association disciplinary proceedings by mail. However, in the absence of statutory guidance, practitioners can only look to notice requirements set forth in section 1013 to determine what constitutes fair notice by mail. If adopted, this resolution would effectively address the lack of clear guidance in existing law and lend clarity to the issue of due process and notice requirements under section 1363. Therefore, this resolution resolves notice issues which are inherent in existing law.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 1363 to read as follows:

- 1 § 1363.
- 2 (a) A common interest development shall be managed by an association that may be
- 3 incorporated or unincorporated. The association may be referred to as a community
- 4 association.
- 5 (b) An association, whether incorporated or unincorporated, shall prepare a budget
- 6 pursuant to Section 1365 and disclose information, if requested, in accordance with
- 7 Section 1368.
- 8 (c) Unless the governing documents provide otherwise, and regardless of whether the
- 9 association is incorporated or unincorporated, the association may exercise the powers
- 10 granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the
- 11 Corporations Code, except that an unincorporated association may not adopt or use a
- 12 corporate seal or issue membership certificates in accordance with Section 7313 of the
- 13 Corporations Code.
- 14 The association, whether incorporated or unincorporated, may exercise the powers

15 granted to an association in this title.

16 (d) Meetings of the membership of the association shall be conducted in accordance
17 with a recognized system of parliamentary procedure or any parliamentary procedures the
18 association may adopt.

19 (e) Notwithstanding any other provision of law, notice of meetings of the members
20 shall specify those matters the board intends to present for action by the members, but,
21 except as otherwise provided by law, any proper matter may be presented at the meeting
22 for action.

23 (f) Members of the association shall have access to association records, including
24 accounting books and records and membership lists, in accordance with Article 3
25 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the
26 Corporations Code. The members of the association shall have the same access to the
27 operating rules of the association as they have to the accounting books and records of the
28 association.

29 (g) If an association adopts or has adopted a policy imposing any monetary penalty,
30 including any fee, on any association member for a violation of the governing documents
31 or rules of the association, including any monetary penalty relating to the activities of a
32 guest or invitee of a member, the board of directors shall adopt and distribute to each
33 member, by personal delivery or first-class mail, a schedule of the monetary penalties that
34 may be assessed for those violations, which shall be in accordance with authorization for
35 member discipline contained in the governing documents. The board of directors shall not
36 be required to distribute any additional schedules of monetary penalties unless there are
37 changes from the schedule that was adopted and distributed to the members pursuant to
38 this subdivision.

39 (h) When the board of directors is to meet to consider or impose discipline upon a
40 member, the board shall notify the member in writing, by either personal delivery or first-
41 class mail, at least 10 days prior to the meeting. The notification given pursuant to this
42 paragraph shall be subject to the provisions of Code of Civil Procedure section 1013 and
43 shall contain, at a minimum, the date, time, and place of the meeting, the nature of the
44 alleged violation for which a member may be disciplined, and a statement that the member
45 has a right to attend and may address the board at the meeting. The board of directors of
46 the association shall meet in executive session if requested by the member being
47 disciplined.

48 If the board imposes discipline on a member, the board shall provide the member a
49 written notification of the disciplinary action, by either personal delivery or first-class
50 mail, within 15 days following the action. A disciplinary action shall not be effective
51 against a member unless the board fulfills the requirements of this subdivision.

52 (i) Whenever two or more associations have consolidated any of their functions under a
53 joint neighborhood association or similar organization, members of each participating
54 association shall be (1) entitled to attend all meetings of the joint association other than
55 executive sessions, (2) given reasonable opportunity for participation in those meetings,
56 and (3) entitled to the same access to the joint association's records as they are to the
57 participating association's records.

58 (j) Nothing in this section shall be construed to create, expand, or reduce the authority
59 of the board of directors of an association to impose monetary penalties on an association
60 member for a violation of the governing documents or rules of the association.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS:

Existing Law: Under California law, absent a provision incorporating such an extension, the time periods for responding to mailed notices given pursuant to the Civil Code are not subject to the extension authorized by Code of Civil Procedure section 1013 for mailed notices. *Colyear v. Tobriner* (1936) 7 Cal.2d 735. Therefore, the time to respond to a notice given pursuant to Civil Code section 1363 subdivision (h) is not subject to extension if the notice is mailed.

This Resolution: Would allow a homeowner the extension authorized by Code of Civil Procedure section 1013 if the association mails notice to a member of a meeting to consider or impose discipline upon the member.

The Problem: Under current law, a homeowners association can meet to impose discipline on a member upon ten (10) days notice, but does not afford an extension to the homeowner if the notice is mailed. If the owner is located out of state, or the notice is mailed during a long holiday period such as Thanksgiving, or even over a long weekend, the notice to the homeowner can be so short that it becomes impossible for the homeowner to respond effectively. Disputes between homeowners and associations are rarely of such a nature as to justify that the association has to act on short notice. It is only fair that before a homeowner is subjected to discipline, that the homeowner have reasonable opportunity to respond to the charges. The extensions provided by Code of Civil Procedure section 1013 will afford an extension of the notice period which is generally presumed reasonable in California.

IMPACT STATEMENT:

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Arthur M. Wilcox, Jr., Esq., 530 B Street, Suite 1410, San Diego, California 92101; voice: (619) 696-6788; fax: (619) 696-8685; e-mail: awilcox@1410lawoffices.com.

RESPONSIBLE FLOOR DELEGATE: Art Wilcox