



DUE PROCESS

Penalties, such as [fines](#) and suspension of [privileges](#), cannot be imposed against a member unless due process has been followed. "Due process" is procedural fairness in the board's decision-making process. The process must be fair and reasonable, and not arbitrary or capricious. [Ironwood Owners Ass'n IX v. Solomon](#)

Elements of Due Process. The elements of due process include: (i) giving the accused notice of the alleged violation; (ii) providing a reasonable opportunity for the person to defend themselves; (iii) knowing the identity of the accuser with an opportunity to cross-examine the witness; and (iv) giving the accused an opportunity to examine and refute the evidence. *Applebaum v. Board of Directors* (1980) 104 Cal.App.3d 648, 657; *Carson v. Glass Bottle Blowers* (1951) 37 Cal.2d 134, 144; [Civil Code §1363\(h\)](#); [Civil Code §1363.05\(b\)](#); [Corp. Code §7341\(c\)\(3\)](#)

When Violations Occur. Before imposing penalties, associations must do the following:

1. **Notice of Procedures.** The procedure for imposing penalties or suspending membership privileges must be in the governing documents. In the alternative, it must be annually sent to all members. [Corp. Code §7341\(c\)\(1\)](#)
2. **Notice of Hearing.** The person must be given written notice of the violation and hearing by personal delivery or first-class mail, at least 10 days prior to the meeting at which monetary penalties are imposed (unless the governing documents provide for a longer notice period). [Civil Code §1363\(h\)](#) For **suspension of privileges**, the notice must be at least 15 days prior to the hearing. [Corp. Code §7341\(d\)](#) The notice must be reasonably calculated to provide actual notice to the member. [Corp. Code §7341\(d\)](#) The notice must contain the following:
 - The date, time, and place of the hearing,
 - The nature of the alleged violation for which a member may be disciplined, and
 - A statement that the member has a right to attend the hearing and present evidence in his/her defense. [Civil Code §1363\(h\)](#); see [sample notice](#)
3. **Executive Session.** Hearings should always be in [executive session](#). Members have the right to submit their defense in writing rather than make an appearance before the board. [Corp. Code §7341\(c\)\(3\)](#)
4. **Defense.** The accused has the right to know the identity of his/her [accuser](#) and must have an opportunity to [question](#) the witness; and giving the accused an opportunity to examine and refute the [evidence](#).
5. **Decision.** Unless the association's governing documents provide for a longer notice period, notice of the board's decision must be given by personal delivery or first-class mail within 15 days following the board's decision [Civil Code §1363\(h\)](#); [Corp. Code §7341\(c\)\(2\)](#)

RECOMMENDATION. The above procedures are generally not found in an association's articles or bylaws. Therefore, boards should either (i) amend their bylaws to include the above procedures or (ii) include the procedures in the annual disclosures mailed to all members. For more information, [contact us](#).