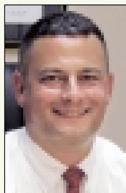
"Meet and Confer"

Complying with the New Internal Dispute Resolution Law

BY KENNETH H. DILLINGHAM, JR.



While the new legislation effective this year may seem overwhelming (as many of you have said to us!), by far the most difficult one is the new requirements with regard to disputes within your communities. First, let's recap the new requirements, and offer suggestions on how you and your communities may implement a workable policy.

Frequent readers should know of these new requirements. Civil Code 1363.810 et. seq., added by Assembly Bill 1836, imposes new dispute resolution requirements on common interest subdivisions. Any disputes within the community involving the Davis-Stirling Common Interest Development Act, the Nonprofit Mutual Benefit Corporation law, or the community's governing documents (CC&Rs, bylaws, rules, etc.) are subject to these new requirements.

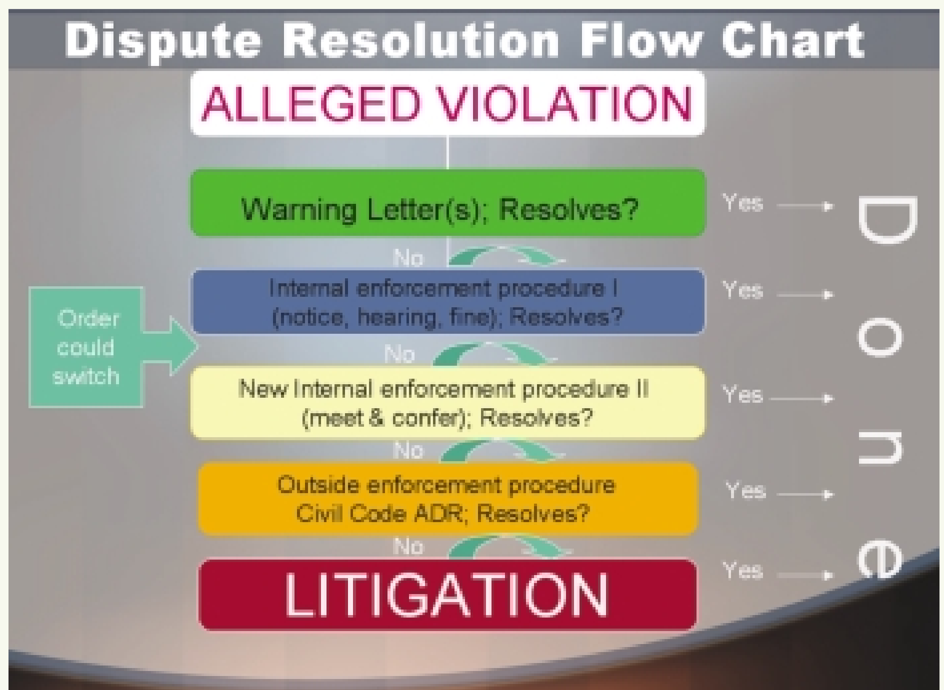
These new requirements add another layer of rules dealing with disputes and violations in community associations. These new rules do not replace any existing procedure (for example, your notice/hearing/fine procedures, or any external dispute resolution like mediation or arbitration). They add another layer of internal dispute resolution procedures.

Associations and boards must now provide "...a fair, reasonable, and expeditious procedure..." for resolving disputes in their communities. If you adopt a new procedure, it must be adopted by the association following the new rule adoption procedures from last year (30-day prior notice to owners, owners have veto rights). It must include the following minimum requirements:

- Either party may invoke the procedure.
- Such notice shall be in writing.
- There must be prompt deadlines, with a maximum time for the association to act.
- Associations must participate if an owner invokes the procedure.
- Owners may participate, but are not required to.
- Both parties must have the means by which they may explain their positions.
- Owners have the right to appeal any decision directly to the board.
- Any solution (resolution or agreement) that is not in conflict with law or the governing documents binds the parties, and may be judicially enforced.
- Owners may not be charged any fee to participate in the process.

If you do not adopt a new procedure, there is a "default" statutory procedure in Civil Code §1363.840. While the default procedure includes the above requirements, it has several potential problems that could adversely affect communities. Thus, we have the following suggestions for you:

1. **Adopt your own procedure.** While you could use the default procedure, you may wish to consider adopting your own procedure. Remember that it needs to be "expeditious," or quick. It also must be fair. By adopting your own procedure, you will be able to craft something that you can work with on your schedule.
2. **Set parameters for resolutions.** In your own procedure, you have the ability to set parameters within which the board-designee or committee may work within to resolve the dispute. By setting parameters you can mitigate or minimize the potential solution that is not acceptable to the community as crafted by either the designee or committee.
3. **Consider personal safety issues.** While the law does not require you to meet with the owner at his or her home, there are situations where the dispute is heated. In such a situation, a "mutually convenient" place does not need to be at the owners' residence.
4. **Consider whether the entire board needs to participate.** Several people have expressed concerns about having one or two people (the designee or committee meeting



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with the owner) deciding or crafting an agreement or resolution that the entire board does not agree with. If this is a concern, you may wish to consider whether the designee or committee needs prior board approval before signing an agreement or resolution. While not specifically prohibited by the statute, if such a procedure causes an undue delay, it may not be considered "expeditious" as required by the statute.

5. **Consider Signatures.** You may wish to consider whether the designee or committee can enter into an agreement with the owner during the "Meet and Confer" process. This would involve obtaining a signature or initial of the owner at the time. However, beware that such a signed agreement may be binding on the association, regardless of the terms of the agreement. Alternatively, the owners' initials on a handwritten memorandum may help in the accuracy of drafting the final agreement.
6. **Remember to include an appeal right.** The minimum requirements of an individually-adopted procedure must include the ability of an owner to appeal directly to the entire board. Any procedure you adopt must include this right.
7. **Owners may not be charged a fee.** Remember that owners may not be charged a fee to participate in your newly-adopted procedure. Thus, if there are any costs incurred, the homeowners association must absorb them.
8. **Consider outside help.** Note that there is nothing stopping you from adopting a procedure using an outside party to help reach a resolution. In fact, the statute specifically references the "maximum, reasonable use of available local dispute resolution programs involving a neutral third party..." It references the Web sites of the Department of Consumer Affairs and the United States Department of Housing and Urban Development as resources. However, remember that owners may not be charged a fee to participate.

Part of the difficulty with crafting a procedure involves the potential wide variety of disputes it must be designed to address. Your procedure will need to include enough flexibility so that you can make it work in your community.

As with any legal question, remember that the assistance of legal counsel can be extremely valuable in crafting and adopting a dispute resolution procedure. Thus, if you have any questions, thoughts or concerns, you should discuss them with your legal counsel. ■

Ken Dillingham is the chair of the legislative action committee for CAI-San Diego.

Tongue-in-Cheek

Top Ten List of Why to Amend Your CC&Rs

BY KEN DILLINGHAM, ESQ.

1. You don't like them, don't want to use them, and the owners are revolting.
2. You can't read them; they've been copied 12 million times.
3. They don't comply with law.
4. They have illegal provisions in them.
5. They restrict your ability to collect assessments.
6. They don't match the maintenance scheme developed over the years.
7. They have been superseded by federal law.
8. There's so many amendments that you have to bookmark 12 pages to find anything.
9. They're written so only an attorney can understand them.
10. They don't protect the Board of Directors to the fullest extent possible.