

El Rio Procedure for Disciplinary Action

The goal of this procedure is to work with members and other residents cooperatively, as much as possible, to meet the Park's needs and their needs. Fines and other penalizing actions are a last resort, when more cooperative methods have failed or are not practical. The intention of the fine structure is to act as a deterrent, and never as a punishment or method of raising funds for the Park.

State law requires that HOAs make Meet and Confer an option for resolving conflicts between the HOA and members. Our Bylaws go a step further in requiring that for most conflicts (such as rule violations), we offer Meet and Confer proactively.

A simplified flowchart version of this procedure is attached.

1. When the manager becomes aware of a violation of our Rules or other governing documents that requires a response, the first step may be that they, or a Board member, speaks to the person about it. If that is not practical, or has already been tried, the manager sends a friendly-toned letter that communicates the following:
 - a. A description of the violation the Coop believes occurred;
 - b. A request to fix the problem within a time frame of not fewer than 7 days;
 - c. A description of Meet and Confer, noting that the Member may request it, and that the Coop will offer it if the problem is not fixed. (In the case of a repeated violation of the same rule, for which a Meet and Confer has already occurred within 6 months, the Meet and Confer may be skipped at the Board's discretion);
 - d. An explanation that if the Meet and Confer does not occur or does not result in a resolution of the problem, there will be a hearing before the Board that could result in a fine or other disciplinary action. *Ref: Bylaws 4.10(b)*
2. If the problem is not resolved within the time frame, the Board will appoint two or more of its members to a Meet and Confer team. (See exception in 1c above.) An invitation is sent to the Member, and if the person is interested, every attempt is made to schedule a time to meet. If the Member does not respond within 7 days with interest in the Meet and Confer, go to step 3. (In the case of a Meet and Confer that does not resolve the issue, see footnote 2 regarding ADR).
Ref: Bylaws 4.10(b)(1)
3. The manager sends a Hearing Notice letter. (Note that a person who is "witness" to the violation will need to be present at the hearing in order for the hearing to take place.) The letter includes:
 - a. The date, time, and place of the hearing (usually the next Board meeting; however, the Member needs to receive the notice at least 10 days in advance);
 - b. The nature of the alleged violation; and
 - c. A statement that the Member has a right to attend the hearing and present evidence in their defense.

¹ Note: This procedure is not for use in the case of an urgent need to change behavior; for example, when behavior is causing potential or actual serious harm to health and safety or destruction of common property. In that case, refer to Bylaws 17.2 about legal action in cases of imminent danger. This procedure is also not for assessment defaults (e.g. not paying assessments or fines). Refer to Bylaws 4.10(a).

Note: If the person requests a rescheduling of the hearing, the request will be granted one time without questions. If they ask again, they will be required to give a good reason. The Board President will make the decision about whether to again reschedule.

Ref: Bylaws 4.10(b)(2), Civil Code § 5855

4. Details about the hearings:
 - a. The hearings are held in executive session. For minor offenses, they are held prior to the public session of the Board meeting, and allotted a specific amount of time. If more time is needed, they can be continued at another Board meeting or with a Board-appointed committee of at least three Directors.
 - b. The Member has the right to examine any evidence. If the Board feels it would be helpful to provide written evidence to the Member in advance of the hearing, it can do so.
 - c. Parties do not have the right to quiz the board and demand that the board answer their questions about other owners, other violations, etc.
 - d. Neither members nor the Board have the right to record the hearing.
 - e. The Board will excuse the parties from the room before discussing the matter, including the evidence presented and what penalties, if any, to impose.
 - f. Penalties will not be imposed automatically but only if the Board believes that a penalty is likely to be useful in gaining cooperation.
 - g. If the Member does not want to appear in person, they may send a (non-lawyer) representative, or a written statement. If they do not show and have not arranged a reschedule, the hearing proceeds without them.
 - h. If the Member repeats the same offense, they cannot be penalized for it without another hearing. However, if there is an ongoing violation (e.g., a non-compliant construction, or item in their parking area), a per-day fine may be issued until the violation is fixed.

Refer to Davis-Stirling.com, "Due Process Defined."

5. Notice of the disciplinary action must be given in writing within 15 days following the hearing. If the Board is recommending Membership termination, please refer to Bylaws 4.10(c) for special hearing procedures. For other cases, the letter should contain:
 - a. the date of the hearing;
 - b. the specific provisions violated;
 - c. whether or not the owner was present at the hearing (or sent a representative);
 - d. a summary of the events leading to the hearing;

²For non-urgent cases involving potential legal action ("declaratory or injunctive relief, or unlawful detainer proceedings"), the Coop will offer ADR before holding a hearing. See Bylaws 17.4 and 4.10(b)(3)

- e. The evidence that the owner was in violation and the evidence, if any, presented by the owner in defense;
- f. the findings by the board (e.g., the owner's dog created a nuisance with its incessant barking; the owner modified their unit without architectural approval; the owner's tenant was speeding within the Park, etc.)
- g. the discipline imposed by the Board (e.g., a fine or suspended fine, suspension of privileges, etc.)

Refer to Davis-Stirling.com, "Due Process Defined," Civil Code § 5855

- 6. Members don't have the right to appeal the decision the Board makes at the hearing. (If the hearing was before a Board-appointed discipline committee rather than the Board, they have the right to appeal to the Board. *Davis-Stirling.com, "Due Process Defined."*) However, if the member presents new or different facts not presented in the original hearing, the Board will reconsider its decision. Also, the Member can request ADR (outside mediation) at this point; see Bylaws Section 4.10(b).
- 7. If a Member refuses to comply despite the penalties levied, the Board may then follow the remaining dispute resolution steps in Article 17, including offering ADR. If all else fails, the Board may take legal action and seek a court order as well as judgment for any fines which continue to accrue until judgment is entered.

Ref: Bylaws 17.4

[fine schedule on next page]

FINE SCHEDULE

1st Violation	\$25 to \$50. The Board may give a "suspended fine" that is only assessed if there is another violation (same offense) within 6 months.
2nd Violation (same offense)*	\$50 to \$200
3rd Violation (same offense)	\$100 to \$300
Additional Violations (same offense)	Up to \$400
Safety Violation	Up to \$500
Continuing Violation	Daily fines until cured, as above or lower

** 2nd, 3rd, and additional violation categories apply within a year of the first notice. Note that the second (and subsequent) violation count applies even if there was no hearing for the first offense, as long as the first offense was clearly documented.*

1. **Nuisance and offensive behavior**, for example: Unleashed or barking dog, loud noise after hours, harassing behavior.

Potential fine up to \$50 for a first offense.

2. **Structural/Architectural and Space violations**, for example: Unapproved construction, failure to correct safety or code issues, failure to correct violations noted in inspection reports.

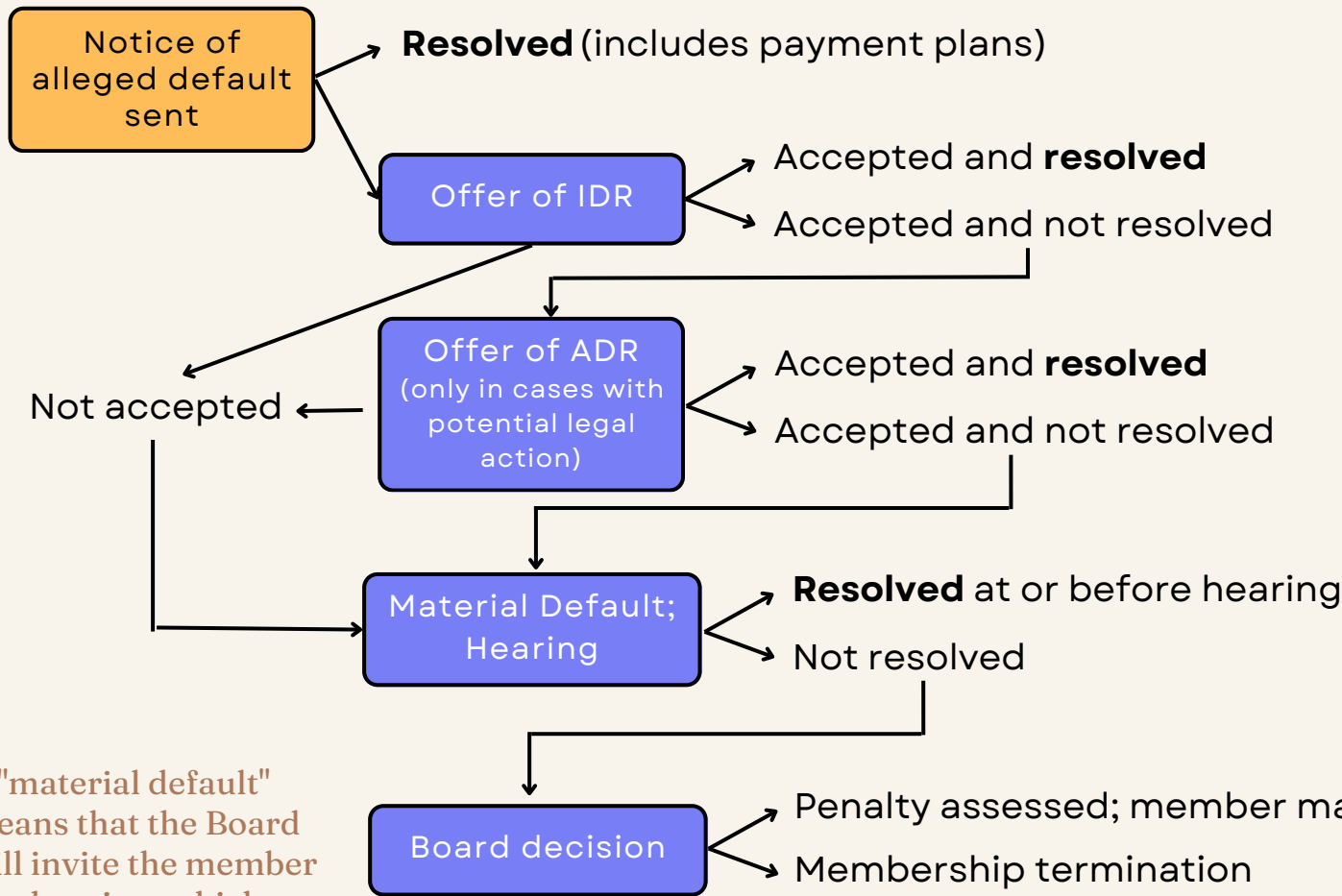
Potential fines up to \$50 for the first notice of violation, plus daily fines of \$10 to \$50 per day depending on the severity of the violation, until the violation is abated, not to exceed 180 days.

3. **Violations involving the common area**, for example: Damage to a common area, or unapproved changes to a common area.

Potential fines up to \$50 for the first notice of violation. In addition, the Board may add any reasonable costs incurred by the Park for repair or replacement of items in the common area. The Board may also suspend the privilege of using common areas for up to a year after a violation.

4. **Violations that endanger or damage persons or property**, for example, keeping items on one's lot that create a serious fire hazard to the Park, intentionally damaging a resident's fence or other structures.

A fine of up to \$500 may be levied on the first offense. Such cases also carry the probability of having to pay for damages and legal action.



"Defaults" range from failure to pay assessments to breaking Park rules. A complete list can be found in Bylaws section 4.9.

IDR refers to "Meet and Confer," a meeting with 1 to 3 Board members. ADR refers to mediation with an outside mediator.

A "material default" means that the Board will invite the member to a hearing, which may result in a consequence such as a fine or loss of membership.

If the Board is pursuing Membership Termination for a Material Default, a Membership Termination Notice will be sent with the invitation to the Hearing. Special rules apply to such a Hearing. Refer to Bylaws section 4.10c.

This flowchart focuses on disputes that begin with the Cooperative sending a notice of an alleged default to a member. In addition, a member can initiate dispute resolution with the Cooperative by requesting a Meet and Confer.

El Rio Dispute Resolution Process