



Homeowners associations that govern condominiums and other common interest communities function through the efforts of volunteer directors, officers, management agents, and employees. The officers, management agents and employees play key roles in the operations of a homeowners association, but the directors are responsible for making the decisions as to how the association conducts its business. Thus, while certain responsibilities of an association's directors may be delegated by the board to officers, management personnel and employees, at the end of the day the directors still have the ultimate responsibility for properly fulfilling those responsibilities.

Because operating a homeowners association is like operating a business, and there are many different facets involved in running a business, it is critical that those who serve as directors are well informed about many different things including the content of the association's governing documents, applicable state and federal laws that must be complied with, and the hierarchy involved in the application of the laws and the governing documents.

Homeowners Association Directors Must Play by the Rules

Although the responsibilities that are vested in the directors of a homeowners association are imposed on all of the directors who must act through appropriate collective action as a board, and not at the direction of any one individual director, occasionally a homeowners association will find itself paralyzed by a dysfunctional board that is unable to properly conduct its business because it is being controlled by one person who does not play by the rules. Such a situation typically occurs in smaller homeowners associations where it is difficult to get members to serve as directors, but it can also occur in larger associations. In either event, the association finds itself in a position where one person, who is also frequently elected the president, has served on the board for many years and by virtue of his or her seniority and familiarity with the operations of the association, has taken over control and is not challenged by the other directors. As a result, other well intentioned volunteers who have been elected as directors find it difficult, if not impossible, to properly operate the association and ultimately lose interest. As the situation perpetuates itself and over a period of time, required board meetings and/or annual membership meetings do not take place, minutes are not maintained, reserves are not maintained, required annual reporting does not take place, and the association ceases to function as required by applicable laws and the association's governing documents.

Getting Control Over Directors Who Refuse to Play by the Rules

There are various alternatives that should be considered when it comes to getting control over an officer and/or a director that is not playing by the rules and, as a result, is disrupting the proper functioning of the association's board of directors and the operations of the association. In some situations, control over the

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person can be obtained by action of the remaining directors through such things as: (i) removing that person from their position as an elected officer of the association (officers serve at the pleasure of the board); (ii) removing that person as an authorized signor on all bank accounts in the name of the association; (iii) informing management personnel that they are not to take instruction from that person acting unilaterally; (iv) informing service providers and vendors that the person no longer has authority to unilaterally act on behalf of the association. After the problematic director has been stripped of his or her power, they could generally remain on the board until the next annual election of new directors.

If stripping the person of their power does not get the person under control, the remaining directors should consider whether or not they have the authority to remove the director. The grounds for the removal of a director by the remaining directors are set forth in state laws and in an association's governing documents. If the remaining directors are able to remove the director, they can then appoint a replacement director to serve until the next election of directors by the association's members.

When the remaining directors do not have the authority to remove a director before the end of their term, the removal process requires action of either the members of the association or a court of law. Either of these choices involves a lot of effort and expense to the association. The removal of a board member by the association's members must be done in strict compliance with applicable provisions in the association's governing documents and in state statutes, and the process can be a complicated, lengthy, and costly. Once the association's members have taken action to remove a director, his or her replacement must be elected by the members as part of the process. Before embarking on the process, legal counsel should be consulted for guidance in order to ensure that the proper procedures are followed.

As a last resort, directors who are not playing by the rules and are disruptive to the association can be removed through a court action that may be filed by the remaining directors or association members in accordance with applicable provisions in the association's bylaws and state statutes. It is also possible that control over the disruptive director may be obtained without the court actually removing him or her from their position as a director through the issuance of an injunctive order that either directs or restrains certain behavior on the part of the director.

Conclusion

Homeowners associations that are confronted with situations involving one or more directors that refuse to comply with the association's governing documents and applicable laws regarding the operations of the association must confront the situation and take appropriate action to regain control and put a stop to the improper actions. To accomplish this, the remaining directors and the association's members must be willing to put forth the effort for the betterment of their community. This requires a willingness on the part of the remaining directors to take action and, if membership involvement is required, a willingness on the part of other members of the association to get involved by doing such things as calling for and attending membership meetings, participating in votes, and volunteering their services and becoming more active in the operations of the association.

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