

## WHAT'S THE DIFFERENCE BETWEEN DIRECTORS AND OFFICERS?

In most homeowners associations, the same individuals usually serve as both directors and officers. In our experience, there is often confusion about the difference between “directors” and “officers,” and many clients ask us why it is necessary to have one section of the governing documents (usually the bylaws)<sup>1</sup> devoted to directors while another is devoted to officers. The answer is that homeowners associations are corporations and, legally, directors and officers are different and serve different purposes, even if the same people serve in both capacities.

### Directors

“Directors” are elected by the members of the association (i.e. homeowners) to serve on the board of directors for the association. Although all governing documents are different, the board of directors typically is responsible for managing the real property within the development on behalf of the association. The board is also responsible for enforcing the governing documents and levying and collecting assessments sufficient to meet the association’s obligations. (Civil Code section 1366.)

The directors are the corporate decision makers with regard to the vast majority of the association’s business. Only the directors are entitled vote on those association business issues that California law and/or the governing documents do not specify must be the subject of a member vote.

Directors have a duty to the members who elect them; they are fiduciaries charged with acting in the best interest of the association and all its members, and are, in fact, barred from delegating that decision-making authority to anyone else.

### Officers

By contrast, “officers” are appointed by the board and serve at the pleasure of the board. (Corporations Code section 7213(b).) Each corporate association must have a president, a secretary and a treasurer (sometime called the chief financial officer) (Corporations Code section 7213(a)), but the governing documents of your association may allow or require additional officers. Additionally, most governing documents give the board the authority to appoint additional officers beyond those specified, and sometimes boards appoint “advisory” officers. Unless the articles or bylaws provide otherwise, one person may hold multiple offices. (Corporations Code section 7213(a).) Governing documents often provide that the offices of secretary and treasurer may be held by the same person.

Sometimes governing documents require that certain officers already be directors of the association; however, in theory, the directors may be entirely different people than the officers. In practice, most directors in homeowners associations often also serve as officers at the same time. Officers do not have voting rights, so directors vote only in their capacities as directors.

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<sup>1</sup> Because bylaws specify how the corporation functions, provisions regarding officers and directors typically will be found in the bylaws. However, all governing documents are different, and you should consult with your association’s attorney regarding specific questions.

The duties of the officers typically are enumerated in the governing documents and most often include the duty to keep minutes, preside over meetings, and to sign contracts, loan documents and checks on behalf of the Association.

### **Frequently Asked Questions**

**Q: Can a candidate run for “board president?”**

**A:** No. We have seen dissident homeowners campaign for “board president,” but that is a misnomer. The president is not elected by the members, but instead (like all officers) is elected/appointed by the board of directors itself after the directors are elected by the members. Candidates run for director positions, not officer positions.

**Q: Does the president vote?**

**A:** There is a popular myth in homeowners associations that the president should not be allowed to vote. **Legally, each director is authorized to cast one vote** (unless a director has a conflict of interest, in which case he or she should not vote at all). The president, like every other director of the association, may vote in his or her capacity as a director, irrespective of his or her office.

Some parliamentary procedures discourage presidents from voting unless required to break a tie, but Robert’s Rules of Order (the most commonly-used form of parliamentary procedure) does not prohibit the president from voting.

The president also may not cast an “extra” vote to break a tie. Most boards have an odd number of directors to avoid tie decisions. In most cases, if the majority of the board does not approve a resolution, it is because there is a vacancy on the board that needs to be filled by the board or the members.

**Q: What authority do the members have with respect to the removal of directors and officers?**

**A:** The same people with authority to vote for directors and officers similarly have authority to remove them. Therefore, only the members may vote to remove a director<sup>2</sup> because the members elected that director, while only the board itself may vote to remove an officer because only the board had authority to appoint/elect that officer. If the board removes an officer, he or she remains a director (provided, of course, he or she remains qualified to serve in that capacity).

Conversely, the members may not remove officers, and the board may not remove a director. However, the board can declare the office of a director vacant if the director has been declared to be of unsound mind by a final order of court, has been convicted of a felony, or fails to meet the qualifications of a director as set forth in the governing documents. (Corporations Code section 7221.)

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As with most homeowners association issues, answers to specific questions often depend on the association’s governing documents. If you have a question about the roles of directors and officers in your association, we would be happy to help you.

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<sup>2</sup> The removal of directors can be extremely complicated; especially if the association’s governing documents permit cumulative voting. You are encouraged to contact legal counsel with specific questions about your association.

## Michael J. Hughes



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Michael Hughes began representing community associations in 1983 and has for more than 25 years provided counsel to boards of directors and memberships in all aspects of CID operations, including CC&R interpretation, revisions and enforcement, commercial relationships with vendors, member disputes and construction defect litigation.

Prior to 1983, his practice focused on commercial real estate law with an emphasis on construction and development. Mr. Hughes has made presentations to the homeowner, real estate and legal communities about the legal aspects of buying and selling property within common interest developments and, as an experienced litigator, has been invited back to Hastings College of the Law to judge trial practice classes. He has written articles for several industry newsletters, including

- Paying For and Maintaining Your Common Area: The Buck Stops Here,
- Is Board Recall the Answer? and Architectural Control: Nice Guys Finish Last.
- Mr. Hughes is a member of the State Bar of California and Consumer Attorneys of California.

## Educational History

Mr. Hughes received his Juris Doctor from the University of California, Hastings College of the Law in San Francisco in 1972 and Bachelor of Arts degrees, with Honors, in History and Political Science from the University of California at Santa Barbara.

## Industry Organizations

Mr. Hughes is a frequent speaker before community association groups, including the Community Associations Institute (CAI)

- The Executive Council of Homeowners (ECHO)
- The California Association of Community Managers (CACM)
- The Building Owners and Managers Association (BOMA)
- The Institute of Real Estate Management (IREM) and
- The Consumer Attorneys of California.

Mr. Hughes has taught BOMA courses for RPA certification, addressed the CAI National Conference, taught courses on mold litigation for Lorman Education Services, addressed the Association of Defense Counsel on SB 800, and is a certified instructor for CACM.

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## John P. Gill



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Since 1992, John Gill has represented homeowners associations and property owners in construction defect claims, business litigation, and general transactional and corporate matters. Mr. Gill is the immediate Past President of the Bay Area and Central California Chapter of the Community Associations Institute (CAI), and remains a member of the CAI Board of Directors. He is a member of the Contra Costa Bar Association and the State Bar of California. His career experience also includes representation of individuals, public entities, and businesses in general and business litigation matters.

## Educational History

Mr. Gill received his Juris Doctor from the University of California, Hastings College of the Law in 1989, and received his Bachelor of Arts degree in Political Science in 1986 from Santa Clara University.

## Industry Organizations

Mr. Gill is a member of the Community Associations Institute (Past President of the Bay Area and Central California Chapter), the Executive Council of Homeowners (ECHO), the California Association of Community Managers (CACM), and the Consumer Attorneys of California. He has written several articles and lectured on numerous occasions for trade organizations and memberships on a variety of topics pertinent to community managers, property owners, common interest developments and boards of directors.

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## Michael J. Cochrane



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Michael J. Cochrane has been practicing law in Northern California for more than twenty years. His focus has been representing homeowners who have suffered damages from landslides, foundation movement, fire, water intrusion, and other real property related damage claims. During Mr. Cochrane's career, he has successfully represented hundreds of individual homeowners in lawsuits for damages against the builders and developers of their homes and lots. He has also successfully represented homeowners in damage claims against Cities, Counties, and other public entities, where the action or inaction of the public entity

has caused damage to the homeowner's property. Mr. Cochrane has also successfully represented homeowners in claims against insurance companies that have wrongfully denied the homeowner's damage claims.

Mr. Cochrane has successfully tried cases to verdict before juries and judges in Contra Costa, Alameda, and Sacramento Counties. He has also acted as Judge Pro Tem in Contra Costa and Alameda Counties, and has published several articles concerning topics of interest in the area of construction defect litigation

## **Educational History**

Mr. Cochrane received his Juris Doctor from Washington University in St. Louis, Missouri in 1983, and Bachelor of Science degree in Journalism from the University of Florida, Gainesville, Florida.

## **Bar Memberships**

Mr. Cochrane is a member of the State Bar of California, and the Contra Costa and Alameda Bar Association. He is an active member of the Litigation and Real Estate Sections of these Bar Associations.

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### **Amy K. Tinetti**



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Amy Tinetti joined Hughes Gill Cochrane in 2007, and became a Principal in 2012. She has been representing homeowners associations since 2004 in all aspects of their corporate operations, including governing document analysis, interpretation, revision and enforcement, elections, real property and title issues, planning and collection of large special assessments, analyzing and drafting agreements with vendors, and member disputes and litigation.

Prior to 2004, Ms. Tinetti practiced for more than five years as a litigation attorney handling medical malpractice defense, insurance defense, business and commercial real estate matters. Ms. Tinetti's practice also included insurance coverage matters.

## **Educational History**

Ms. Tinetti received her Juris Doctor in 1998 from Emory University School of Law in Atlanta, Georgia, where she served as a Notes and Comments Editor of the Emory Law Journal. Ms. Tinetti received her Bachelor of Arts in Communication from the University of California at San Diego.

## **Bar Memberships**

Ms. Tinetti became a member of the State Bar of California in 1998 and is admitted to practice before the U.S. District Court for the Northern District of California.

# Industry Organizations

Ms. Tinetti is the Past President of the Bay Area and Central California Chapter of the Community Associations Institute (CAI) and is on the faculty of the California Association of Community Managers (CACM). Ms. Tinetti is a frequent speaker, writer and contributor for trade organizations and community associations on a variety of topics pertinent to Board members, community managers, and members of common interest developments.

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## MORE READING RESOURCES

### NEWS & PUBLICATIONS

-  [Disclosure Checklists -- 2013](#)
-  [Legislature Targets Board Actions by E-mail](#)
-  [Yes, Every Association Really Needs Election Rules, But Why?](#)
-  [Frequently Asked Questions About Swimming Pools](#)
-  [The ABC's \(and D's\) of Working with Contractors](#)
-  [How Old Is Old Enough?](#)
-  [What's the Difference Between Officers and Directors?](#)
-  [Instructions and Timetable for Elections](#)
-  [Resolving Disputes With and Between Homeowners](#)
-  [Foreclosure of a Delinquent Assessment Lien](#)
-  [Top 10 Foreclosure Issues](#)
-  [Notice of Board Meetings Now Include Agendas](#)
-  [The End of Exclusivity Clauses in Cable Contracts](#)
-  [Disclosure of Reserve Funding Plan Summary](#)
-  [Get the Right Insurance to Protect Your Association](#)
-  [Everything You Need to Know to Send Association Documents Via E-Mail \(with copyright and Form REQUEST attached\)](#)