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## When to Remove an HOA Board Member From Office--But Not the Board

An HOAleader.com reader asks, "[I'm c]urrently on a HOA board in Arizona, which is part of a large condo complex. Our current president has taken numerous actions that are not in the best interest of the owners. He has often breached his fiduciary duties to the home owners. I am new to the board but see that if we stay on this path, the entire board is potentially at risk, if we do not act appropriately soon.

"What is the proper procedure to remove the current president from that position and move him to strictly a board member role, knowing that he will most likely quit? (Big ego.)" The reader added a follow-up post: "Was able to answer my own question. The answer was spelled out in our CC&Rs. All it takes is a majority vote by the board to remove from office."

Here, we answer two questions: Is that typically how it's done: you remove a director from office—but not the board—by a majority vote of the board? Also, that's a serious step to take. So when is removing a board member from office warranted, especially since you'll still have to work with that person on the board?

### All It Takes Is a Vote

Generally, according to most associations' governing documents, the board can, by a majority vote, remove a director from an officer position on the board.

"The officers of the board serve at the pleasure of the board," says Bob Diamond, a partner at the law firm Reed Smith in Falls Church, Va., who helped write the Washington, D.C., condo act in 1976 and worked on the Uniform Condo Act, which 24 states have adopted. "If the majority doesn't like them, they can kick them out."

Yes, it typically requires only a majority vote of the HOA board, agrees Randy Opotowsky, a partner at The Steeg Law Firm in New Orleans, who represents 15-20 associations at any given time. "Members elect the directors, who appoint the officers," he explains. "But look to the bylaws and articles of incorporation. Most bylaws set the percentage and procedure for notice and removal officers and directors. For removal of officers, it's probably a majority action by the board, but it may require a supermajority. But that person will still be a director on the board."

### When to take that serious step

As Opotowsky explains, removing a director from office—like removing the president from that office—doesn't mean that person will be off the board. You'll still have to deal with that person on board matters. So when is that tension and potential disruption warranted?

Opatowsky says the most common reasons involve **self dealing**, granting contracts to parties related in some way to the officer, or theft.

But general mismanagement is enough, too. "Usually it's a pattern of behavior, and it's gotten bad enough that this person is jeopardizing the association's finances or the association itself," says Alessandra Stivelman, an associate attorney who specializes in community association law at Eisinger Brown Lewis Frankel & Chaiet in Hollywood, Fla. "It's usually not over a policy dispute, though I don't see how you'd prohibit boards from removing an officer for that reason if the governing documents allowed it.

"The situations where I've seen officers removed have been when owners probably would have done a recall if they could, but it would have taken too much time and energy," adds Stivelman. "In one case, the president mismanaged the association, was getting kickbacks, and possibly committing theft. The rest of the board couldn't prove it, but there was a lot of suspicion. In another case, the president was running the board unilaterally and wasn't going to the other directors to discuss issues; the other directors were requesting information, and the president wasn't following through and wasn't abiding by the governing documents. At that point, board members had to make a decision in the best interest of the association to take away the president's power."

Diamond agrees the move is wise only when there have been serious problems. "The only time you do it is when the officers aren't performing their job appropriately," he explains. "You don't do it for minor errors. It's when a board president starts walking around telling people what to do, exceeding his authority, or spending money he shouldn't. Or when the treasurer isn't paying attention to financials or the secretary isn't keeping the minutes. That's when you can and should remove them."