

When All Else Fails: How Do You Remove A Member Of The Board?

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What do you do then when a fellow Board member is disruptive or fails to perform his or her duties? If informal requests do not work to achieve change, and all other efforts fail, it may be in the best interests of the Association to remove that trustee from the Board. It should be understood that this alternative is only available if good cause exists for the removal and after all other possible solutions to the problem have been exhausted.

The goal, once this decision has been made, is to decisively take action without creating unnecessary discord in the community. This article will discuss the procedure to achieve the goal.

The starting point in the process is the Association's governing documents. The Master Deed, Declaration and/or By-laws may specify a procedure which requires either a majority vote of the Board members themselves or a certain percentage vote of the eligible voting members of the community.

You may be surprised to learn, however, that your particular Association's governing documents may not spell out the procedure for the removal of a trustee. The procedure is not covered under the New Jersey Condominium Act or under the Planned Real Estate Development Full Disclosure Act or regulations.

Since most community associations (condominium and homeowner associations) are organized as New Jersey nonprofit corporations, the source statute is the New Jersey Nonprofit Corporations Act, N.J.S.A. 15A:1-1 et seq.

N.J.S.A. 15A:6-6 sets forth two alternatives for the removal of trustees if not otherwise varied by the non-profit corporation through its governing documents:

(a) if Board members are elected by vote of all unit owners, a board member may only be removed by (1) vote of the majority of unit owners entitled to cast votes for the election of Board Members and (2) for cause;

(b) if Board members may be elected by the Board of Trustees, then a trustee may be removed by (1) vote of the majority of the Board and (2) for cause.

The procedure set forth is neither expedient nor likely to avoid the creation of contentiousness in the community.

Since most community associations have board members elected by vote of unit owners at an annual meeting, it is safe to assume that the procedure set forth in N.J.S.A. 15A:6-6(a) will apply to the question of removal. In that case, if a board wishes to remove one of its members, several steps must be followed: 1) a special meeting must be called where a quorum of all unit owners entitled to elect a Board member are present in person or by proxy; 2) the intended action must be listed on the agenda for the meeting; and 3) the reasons for the action, i.e., the "good cause" for the removal must be articulated at the meeting; and 4) provide the trustee a chance to be heard.

This is not a simple or quick process. The requirement that a quorum of all unit owners be obtained may stand as the most practical obstacle in achieving the removal. Further, unless the governing documents provide for the suspension of the trustee that is being sought to be removed, he or she remains in place on the Board pending (a) the achievement of a quorum of all unit owners, and (b) a final determination that good cause exists for the removal.

This clearly would take time and would be detrimental to the smooth and efficient administration of Association business. So how to avoid these problems?

The alternative is to review and if necessary, amend your governing documents to set forth a more efficient

procedure. For example, the Association may determine that it wants the ability to remove a trustee without the quorum requirement or that removal should take place by a majority vote of the other board members. Further, the Association may determine that it wants to be able to remove a board member "without cause".

This review of your governing documents should be done sooner rather than later. Under New Jersey law, the procedure for removal in place at the time of an individual trustee's election is the procedure that will govern attempts to remove him or her.

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