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## **The Complete Arizona HOA Guide To Board Member Removal and Resignation**

If the HOA members desire to call a special meeting of the members to discuss the removal of a Board member or the entire Board, such action must be done pursuant to Arizona Statutory Law (A.R.S. §33-1243(H) (Condominiums) or A.R.S. §33-1813(A) (Planned Communities)). Arizona Statutes provide differing procedures depending on the size of the HOA.

Pursuant to A.R.S. §33-1243(H)(4) (Condominiums) or A.R.S. §33-1813(A)(4) (Planned Communities), in a HOA with one thousand or fewer members, the members must present the HOA with a petition signed by at least 25% of the eligible voters<sup>1</sup> in the HOA or a petition signed by at least one hundred voters, whichever standard is lower. In a HOA with more than one thousand members, the members must present the HOA with a petition signed by at least ten percent of the eligible<sup>2</sup> votes in the HOA or a petition signed by at least one thousand voters, whichever standard is lower.

Pursuant to A.R.S. §33-1243(H)(4)(c) (Condominiums) and/or A.R.S. §33-1813(A)(4)(c) (Planned Communities), once the petition has been received by the HOA, the HOA has 30 days to call the special meeting of the members regarding removal.

Once a special meeting of the members has been properly called, the procedures governing the special meeting of the members regarding removal may be found in Arizona Statutory Law (A.R.S. §33-1243(H) (Condominiums) A.R.S. §33-1813(A) (Planned Communities)).

The first step is to set a date, time and location for the special meeting. Next, the HOA must send all members notice of the special meeting and a mail ballot pursuant to A.R.S. §33-1250(C) (Condominiums) or A.R.S. §33-1812(A) (Planned Communities).

In order for the meeting to be valid pursuant to A.R.S. §33-1243(H) (Condominiums) or A.R.S. §33-1813(A) (Planned Communities) and a quorum established, members who are eligible to vote equal

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<sup>1</sup> Eligibility to vote is based on the HOA's governing documents. Generally, Members must be placed on notice and provided an opportunity to be heard prior to being deemed ineligible.

<sup>2</sup> Eligibility to vote is based on the HOA's governing documents. Generally, Members must be placed on notice and provided an opportunity to be heard prior to being deemed ineligible.

to at least 20% of the votes of the HOA or at least one thousand votes, whichever is less, must be present at the meeting in person or as otherwise permitted by law.

A majority of the owners present at the special meeting will decide the question of removal.

### **Other Issues Regarding Board Member Removal**

The Association must retain all documents and other records relating to the proposed removal of the member of the board of directors and any election or other action taken for that director's replacement for at least one year after the date of the special meeting and shall permit members to inspect those documents and records. (A.R.S. §33-1243(H)(4)(f) (Condominiums) or A.R.S. §33-1813(A)(4)(f) (Planned Communities))

If a lawsuit is filed regarding the removal of a board member, the prevailing party in the lawsuit is to be awarded its reasonable attorney fees and costs. (A.R.S. §33-1243(H)(4)(e) (Condominiums) or A.R.S. §33-1813(A)(4)(e) (Planned Communities))

A petition that calls for the removal of the same member of the Board of Directors shall not be submitted more than once during each term of office for that member. (A.R.S. §33-1243(H)(4)(g) (Condominiums) or A.R.S. §33-1813(A)(4)(f) (Planned Communities))

A member of the board of directors who is removed is not eligible to serve on the Board of Directors again until after the expiration of the removed Board Member's term of office, unless the HOA's documents specifically provide for a longer period of ineligibility. (A.R.S. §33-1243(H)(7) (Condominiums) or A.R.S. §33-1813(A)(7) (Planned Communities))

### **Replacement of Removed Directors**

On the removal of at least one but fewer than a majority of the members of the Board of Directors, the vacancies shall be filled as provided in the HOA's Governing Documents. (A.R.S. §33-1243(H)(5) (Condominiums) or A.R.S. §33-1813(A)(5) (Planned Communities))

If the HOA's Governing Documents are silent regarding replacement of Directors removed by the Members, A.R.S. §10-3811(A), a provision of the Arizona Non-Profit Corporations Act to which most Arizona HOAs are subject, would apply.

If a majority of the members of the board of directors are removed, or if the HOA's Governing Documents do not provide a method for filling board vacancies, the HOA shall hold an election for the replacement of the removed directors at a separate meeting of the members of the association that is held not later than thirty days after Directors were removed. (A.R.S. §33-1243(H)(6) (Condominiums) or A.R.S. §33-1813(A)(6) (Planned Communities)).

### **What Happens When No One Wants to Serve on the Board**

There are a few scenarios which can lead to no one serving on the Board of Directors:

- a. All the Board members resign at or near the same time, an *en masse* resignation.

- b. Removal of the entire Board of Directors by a vote of the members without conducting an election of new Board members at the same. Depending on the governing documents and applicable law, in this scenario, the removed Board members may remain on the Board of Directors until new Board members are elected.
- c. Extreme apathy can lead to no one being willing to serve on the Board of Directors. This is most likely to happen in planned developments with few amenities or responsibilities.

When there are no Board members, there may be no one with the authority to make any decisions for the association, to pay bills for essential functions and utilities, or take any other action to keep the association functioning. Frequently in this situation, management keeps carrying out their role. This raises many questions which will depend on the terms of the management contract and any applicable law. Does management have the legal authority to continue managing without a Board of Directors? Conversely, does management have an obligation to continue providing services when there are no Board members?

There are steps community associations can take to prepare for the possibility of an *en masse* Board of Directors resignation to ensure the continued operation of the community association.

### **Planning for the En Masse Resignation**

While *en masse* Board of Directors resignation or complete Board of Directors removal is rare, it does occur. Therefore, it would be wise for Boards to have policies and procedures in place to protect the association should the association find itself without a Board of Directors.

### **Board of Directors Resignation/Removal Policy**

Association Boards should develop a Board of Directors Resignation/Removal Policy that will detail how the association will handle an *en masse* Board of Directors resignation or complete Board of Directors removal. A well written Board of Directors Resignation/Removal Policy will discuss:

- a. Who will make critical Board of Directors related decisions while there is no Board of Directors in place.
- b. What procedures will be effectuated to elect a replacement Board of Directors.
- c. How will a temporary caretaker/trustee be compensated or reimbursed for expenses.

### **Who will make critical Board related decisions while there is no Board of Directors in place?**

The most important aspect of the Board of Directors Resignation/Removal Policy is who will operate the Association for the time when there is no Board of Directors in place. The association's governing documents (usually the association's Bylaws) may provide guidance regarding this issue. If, however, the association's governing documents are silent on this issue, then the Board of Directors should be prepared to act.

Determining who will make critical Board of Directors related decisions while there is no Board of Directors in place is extremely important. In most instances, there are two entities that could serve as a temporary executive of the association; the association's current manager acting in the capacity of a temporary caretaker or an appointed Trustee.

### **The Association's current manager**

Some contracts between associations and their management companies may contain provisions that allow the management company to operate the association as a temporary caretaker should an *en masse* Board of Directors resignation or complete Board of Directors removal occur. If current provisions discussing *en masse* Board of Directors resignation or complete Board of Directors removal are not in the current management company contract, the association and management company may want to discuss adding clauses regarding *en masse* Board of Directors resignation or complete Board of Directors removal as adding such a clause could address this important issue.

### **Appointment of a Temporary Trustee.**

Another option in preparing for *en masse* Board of Directors resignation or complete Board of Directors removal is the prior appointment of a temporary Trustee. Typical examples of a temporary "Trustee" are the association's current manager or the association's attorney. The association's current manager or attorney should be familiar with the operation of the association and should be able to easily step into the role of the temporary "Trustee."

Associations may also choose to appoint an individual or organization with no current ties to the association. The association must understand, however, that if it chooses this route, there may be additional costs related to the individual or organization "getting up to speed" with association operations, policies and procedures.

Whomever the association chooses as a temporary Trustee, the association should meet with the candidate and ensure that the candidate is willing to take on the task. The association should also ascertain what the candidate will charge for trustee services. The association may want to create a fund or provide a retainer to the Trustee that may be used by the Trustee to carry out the Trustee's duties.

Once a temporary Trustee is determined, the Board of Directors should formalize the appointment of the temporary Trustee through a formal Board of Directors Resolution.