

Distinction Between HOA Officers and Directors

Virtually all states have statutes and all HOAs have bylaws and/or other governing documents which mandate that the association have at least the following officers: president, secretary and treasurer. Association bylaws also generally contain provisions that: (i) allow for additional officers at the discretion of the board of directors; and (ii) provide a description of the duties of each officer.

Frequently, HOA members are confused about the distinction between the officers and the directors of their association. The directors are elected by the members of the association to serve for specific terms that are contained in the association's bylaws, and the officers are elected by, and serve at the pleasure of, the board of directors. Thus, the officers can be removed and replaced at any time by action of the board. Another distinction is that the officers have no voting rights, whereas the directors do.

It is common for HOA bylaws to allow for certain multiple offices (not director positions) to be held by the same person. This often occurs in associations that have fewer members and smaller boards of directors. Such associations will frequently have the same person serve such roles as the V.P./Secretary, or the Secretary/Treasurer.

The association's bylaws should also specify the qualifications for the various officers and when the officers are selected by the board. Although directors are frequently elected to the various officer positions, unless required by the association's bylaws, the officers need not be a director of the association. Bylaws typically require the election officers at an open meeting of the directors immediately following the annual meeting of the association's membership where new directors are elected. The officers are determined by a majority vote of the directors and not by the unilateral appointment of one officer, such as the president or a manager of the association.

To become an officer, one must first be nominated for an office by a board member. It is also generally permissible for a director to nominate him or herself for an office. After the nominations, the board members vote on who shall serve in each position via a verbal vote or a secret ballot, if requested by a board member. The nominees may vote for themselves and the person with the most votes is elected to that office.

The elected officers serve for the next term of the directors, or until they resign, which they may do at any time, or until are replaced by action of the board during a given term. Because the officers serve at the pleasure of the board, they can be removed and replaced at any time with or without cause. There are generally no requirements in the bylaws for due process such as advance notice, or a hearing before a person is removed as an officer. As done in the initial election of the officers, the appointment of a new officer should take place in an open meeting of the board of directors, subject to the directors addressing confidential and/or legal issues concerning the matter privately in executive session. The removal of a person from a position as an officer does not impact their position as a director of the association. Thus, even if a person is removed as an officer because of wrongdoing, that person retains all of their rights and privileges as a director until such time as they resign or are properly removed as a director of the association.

Before seeking or accepting a nomination to a particular office the potential candidate should review the association's bylaws to get a clear understanding of the qualifications for serving as that officer and the various duties of the office that they would be responsible for performing if elected to the

office. Clearly, having expertise in an area that involves the responsibilities of a given office would be beneficial to the association and a big plus for the person interested in serving in that position.

HOA Member Services