

21--Can We Remove an Offensive Board Member?

A Board Member can be removed with or without cause by a vote of the Unit Owners. The specific voting requirements will depend on the statute governing your community and your individual Governing Documents. There is no statutory ground for a community to ask a Washington court to remove a Board Member. It is best to avoid placing abusive individuals on the Board in the first place by requiring a vote even when someone runs unopposed.

Removal by Vote of the Owners

If a Board Member is offensive or otherwise abusive, that Board Member may be removed after a vote by the Owners. There does not need to be a specific reason given, so long as the action is supported by a vote of the Unit Owners and the proper procedures are followed. The voting procedures are outlined in the statute governing your community.

Under the *Washington Condominium Act*, RCW 64.34, a removal vote may be taken at any meeting of the Unit Owners at which a Quorum is present. The Board Member will be removed if two-thirds of the voters present vote to remove.¹ Your particular condominium might allow a smaller majority to remove a Board Member. This removal process does not apply to condominiums created before July 1, 1990.

The *Horizontal Property Regimes Act*, RCW 64.32, does not address how to remove a Board Member. The *Washington Nonprofit Corporation Act*, RCW 24.03, allows for removal of Board Members by two-thirds vote of members present at a members meeting.² The *Nonprofit Miscellaneous and Mutual*

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Corporations Act, RCW 24.06, only provides that the Articles of Incorporation must define the removal procedures.³

For Homeowners' Associations, RCW 64.38 also allows a vote to occur at an Owner's meeting where a Quorum of the Owners is present. However, for HOAs only a majority of votes present must be in support of removal in order to oust a Board Member.⁴

The rules established under WUCIOA are more detailed. Like the other statutes discussed, the removal vote must occur at an Owner's meeting with a Quorum present. However, the statute is explicit that removal may not be considered unless the subject was listed in the notice of the meeting. The Board Member must also be given an opportunity to speak before the vote. WUCIOA allows removal if the vote meets the lesser:

1. A majority of the votes in the Association, or
2. Two-thirds of the votes cast at the meeting.⁵

The following examples illustrate the WUCIOA vote requirement:

Example 1: There are 99 votes in the Association and all votes are present at the meeting. A majority of votes in the Association is 50 votes, while two-thirds of those present is 66 votes. In this case, 50 votes are needed to remove the Board Member.

Example 2: There are 99 votes in the Association but only 51 votes are present. A majority of the votes in the Association remains 50 votes. However, two-thirds of those present is now 34 votes. 34 votes are needed to remove the Board Member.

Removal by the Courts

Washington courts will likely decline to use their authority to remove a Board Member because the community has a clear process to do so. While not analyzing the statutes already

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discussed, this issue was addressed in response to a non-profit corporation organized under RCW 24.03.⁶ That statute provides for the removal of a director using a voting process almost identical to that for Condominium Associations under RCW 64.34.⁷ The Court of Appeals reasoned that if the legislature wanted to give the court the power to remove a director, then the legislature would have expressly granted the court that power. As the statute was silent, the court held that it did not have the power to remove a director. None of the statutes governing common interest communities provides for a judicial mechanism to remove a Board Member. Most likely the courts would follow its prior precedent and refuse to create a judicial removal process.

Some states authorize their courts to remove a Board Member. For instance, Pennsylvania law provides a statutory judicial removal process.⁸ However, Pennsylvanian courts are hesitant to exercise this power.⁹ In one case, a Board Member abused and harassed the community. The Board feared that the member's conduct exposed the Association to a lawsuit. The Board turned to the court to remove the director. The court ruled that unless the Board Member engaged in "illegal conduct, fraud, dishonesty or extreme mismanagement" the community is responsible for removing the Board Member.¹⁰ The opinion suggests that even if the Board Member's conduct was sufficient to sustain a discrimination action against the Association, it was still the responsibility of the community, and not the courts, to remove the Board Member from his position.¹¹

Preventing the Situation

Courts do not want to get involved in disputes over Board seats. Once someone gets onto the Board the options are to vote them off of the Board or let them complete their term. For this reason, it is important to ensure potential Board Members possess the proper temperament before allowing them onto the Board. When you do not have more candidates than vacant positions, we recommend that all candidates for a Board are subjected to a yes

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or no vote by the Owners, even if they are running unopposed. If an unopposed candidate does not get a majority of the votes cast approving them, they do not get elected, and the seat remains vacant. We recommend against sticking any random volunteer on the Board when you have a vacancy.

¹ *Board of Directors and Officers*, 64.34.308(8). ("Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant.")

² *Removal of Directors*, RCW 24.03.103(1). ("Any director elected by members may be removed, with or without cause, by two-thirds of the votes cast by members having voting rights with regard to the election of any director, represented in person or by proxy at a meeting of members at which a quorum is present...")

³ RCW 24.06.130. ("...A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.")

⁴ *Board of Directors—Standard of Care – Restrictions – Budget – Removal from Board*, 64.38.025(5). ("The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause.")

⁵ *Officers and Board Members—Removal*, RCW 64.90.520

- (1) Unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is present may remove any board member and any officer elected by the unit owners, with or without cause, if the number of votes in favor of removal cast by unit owners entitled to vote for election of the board member or officer proposed to be removed is at least the lesser of
- (a) a majority of the votes in the association held by such unit owners or
 - (b) two-thirds of the votes cast by such unit owners at the meeting, but:
 - (i) A board member appointed by the declarant may not be removed by a unit owner vote during any period of declarant control;

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- (ii) A board member appointed under RCW 64.90.420(3) of this act may be removed only by the person that appointed that member; and
 - (iii) The unit owners may not consider whether to remove a board member or officer at a meeting of the unit owners unless that subject was listed in the notice of the meeting.
- (2) At any meeting at which a vote to remove a board member or officer is to be taken, the board member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

⁶ *Lyzanchuk v. Yakima Ranches Owners Ass'n, Phase II, Inc.*, 73 Wash.App. 1 (1994).

⁷ *Washington Nonprofit Corporation Act*, RCW 24.03.103(1) (“Any director elected by members may be removed, with or without cause, by two-thirds of the votes cast by members having voting rights with regard to the election of any director, represented in person or by proxy at a meeting of members at which a quorum is present “)

⁸ 15 PA Cons Stat § 5726(c) (2014). (“Upon application of any member or director, the court may remove from office any director in case of fraudulent or dishonest acts, or gross abuse of authority or discretion with reference to the corporation, or for any other proper cause, and may bar from office any director so removed for a period prescribed by the court...”)

⁹ See, *Pocono Country Place Property Owners Association, Inc. v. Kowalski*, No. 904 C.D. 2017, 2018 WL 2089881 (Pa. Commw. Ct. May 7, 2018). (“[A]bsent proof of illegal conduct, fraud, dishonesty or extreme mismanagement” the court would not remove a board member.)

¹⁰ *Kowalski*, 2018 WL 2089881 at *5.

¹¹ *Id.* (“If the Board was concerned that Kowalski’s continuation as a director created an unacceptable risk, it could have acted to remove him under Section 5726(b), rather than seeking removal by the court.”)