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# BOARD RECALLS AND REMOVALS – CONSIDERATIONS AND REQUIREMENTS

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Recalling and removing a Board member can be one of the most contentious issues facing an association. It is best that recall efforts be reserved for situations in which a director has breached his or her fiduciary duties or has otherwise engaged in some type of unlawful activity. Personality conflicts and/or personal vendettas should typically not serve as the basis for a recall attempt.

However, whatever the reason for recall, all parties involved should recognize that tensions are likely to run high during the recall process. As such, both the Board of Directors and the individuals advocating for removal should be committed to adhering to the Association's governing documents and relevant statutes to ensure that proper and legal processes are followed regardless of the outcome. In some instances, this may be easier said than done, especially when the parties engage in personal attacks, threats, and/or unprofessional behavior.

This article is intended to outline some of the relevant considerations and legal requirements implicated in the recall process.

## Initiation of Process

A director who was elected by the homeowners can only be removed by a vote of the homeowners. Therefore, if the recall and removal of a director is desired, a meeting of the homeowners must be called for the purpose of voting on the proposed removal of such director. Such vote typically occurs at a Special Meeting of the Members called for the purpose of voting on the removal of one or more directors.

Pursuant to Section 308 of the Colorado Common Interest Ownership Act ("CCIOA"), a Special Meetings of the Members may be called at the direction of the Association's President, a majority of the Board of Directors, or by homeowners holding 20% or more of the total votes in the Association (or any lower percentage specified in the Association's Bylaws). It is important to note that any petition provided by homeowners desiring a recall should indicate that the purpose of the petition is not directly to vote on the removal of a director, but rather to demand that the Association call a Special Meeting for the purpose of allowing homeowners to vote on the proposed recall and removal of a director.

## Notice

In the event a Special Meeting of the Members is called for recall purposes, the notice for such meeting should:

- Be mailed to all homeowners not less than 10 days or more than 50 days prior to the meeting, and in accordance with the Association's Bylaws.
- Be physically posted in the community.
- Be posted on the Association's website and emailed to all homeowners who have provided an email address to the Association and requested such electronic notice.
- Indicate that the purpose of the meeting is to vote upon the proposed recall and removal of the Board and clarify if the entire Board or only specific individual directors will be subject to the removal vote at the meeting.
- Include a proxy form.
- Include a clear agenda and outline the process that will occur at the meeting including the process to allow homeowners and directors to address the membership and how any vacancies will be filled if a director is removed.

#### At the Meeting

Make sure the Association provides ample time for check-in. There needs to be a system in place to issue ballots to homeowners at the check-in and to verify proxies. A sheet should be provided to allow those homeowners who wish to speak at the meeting to sign up. The Association should follow its Conduct of Meeting Policy and agenda with respect to time limits and ground rules for speaking at the meeting. Board members who are subject to the recall vote should also be given an opportunity to address the homeowners and state their case.

After the relevant parties have been given an opportunity to speak, the vote should be conducted, and the ballots counted. Implement a fair and impartial system to count the ballots and allow observers from each side to observe the count. The ballots must be retained in the Association's records.

#### Voting Requirements

The Association's governing documents, typically the Bylaws, should outline the vote required to recall and removal a director from office. Directors can be removed with or without cause. Section 303(8) of CCIOA provides that a director for a Post-CCIOA community may be removed by a vote of 67% of the homeowners present and voting at the meeting – assuming the Association's quorum requirements are met. Documents for many Pre-CCIOA communities allow for the removal of directors by a majority vote of a quorum of homeowners.

#### Next Steps

After the vote, all parties should recognize that the homeowners have spoken and accept the results. If one or more of the directors are removed, a vote will typically be held at the meeting to elect a replacement director(s). However, as stated above, the replacement process should comply with the requirements of the Association's Bylaws and be outlined on the agenda that is sent to homeowners along with the meeting notice. This will ensure that everyone is on the same page regarding the process to fill any vacancies resulting from the vote.

If you have questions or would like to further discuss Board recall and removal issues please contact a Altitude Community Law attorney at 303.432.9999.

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AUTHOR

By [David Closson](#)



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