



The Members Requested a Recall; now what do we do? Spoiler Alert: there is nothing sexy about this process!

By the Community Association Attorneys at SwedelsonGottlieb

There are three (3) statutory grounds for removing directors, and none of the reasons have to do with whether you like how they speak, are against their politics or whether their house is better landscaped than yours. First, under Corporations Code section 7221, a director can be removed for cause. This means a felony conviction, a court determination of unsound mind, a failure to attend board meetings as required by the by-laws or a failure to meet the qualifications of directors. Second, under Corporations Code section 7223, a director can be removed through court action in the case of fraudulent or dishonest acts or gross abuse of discretion. Finally, under Corporations Code section 7222, one or more of the directors may be removed without cause by vote of the members – this is by far the most common method for removal and the subject of this article.

The procedure for scheduling the recall of one or more of the directors is fairly simple. A petition must be presented to one of the association's corporate officers (e.g., president, vice president or secretary) with the signatures of members who represent at least five percent (5%) of the members of the association. The petition must call for (demand) the recall of the directors, and it must contain the printed and signed names of the petitioners along with their respective addresses.

Importantly, for a removal without cause, which is what we are discussing, there is no requirement that the petition specify the reason for the removal of the directors. In other words, the petition does not need to state that the directors are not maintaining the common area, enforcing the governing documents, or provide any other reason for removal.

A recall petition should request both a recall and, if that recall is successful, an election of replacement directors at the same meeting. Once a recall petition is duly submitted, the board is legally obligated to do two things:

- (1) within twenty (20) days the petition's submittal, the board must notice the requested recall meeting, which must occur within thirty-five (35) to ninety (90) days after the petition's submittal; and
- (2) at least thirty (30) days before the scheduled recall meeting, the board must distribute secret ballots to the members.

If the board fails to act by selecting the date for the recall election, the petitioners may call a meeting of the members without board action, or alternatively, the petitioners may seek a court order to force the matter to a vote.

Even after a recall petition is duly submitted, the recalled directors will remain in office and continue making decisions for the community, unless they are ultimately removed by a vote of the members at the requested recall meeting.



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At the recall meeting, any director whose removal is sought is entitled to have an opportunity to respond to the petition. After the director(s) are heard, the vote required to remove any director depends upon the number of members within the association. If the association consists of less than fifty (50) members, the vote requires the approval of a straight majority of all the members. For an association with fifty (50) or more members, the vote requirement is a majority of the members present at a meeting where quorum is present.

Removal without cause becomes more complicated where the governing documents permit cumulative voting in the election of directors and less than all of the directors are on the recall ballot. Cumulative voting allows a member to cast more than one (1) vote for any single candidate. Where cumulative voting is allowed, no director may be removed (unless the entire board is removed) where the votes cast against removal, if cumulated, would be enough to elect the director. This provision makes it extremely difficult to remove a single director if there is significant member opposition to the removal of the director. This provision does not apply, however, where the entire board is on the recall ballot, in which case the voting requirements described above would apply.

If a board of directors is not fulfilling its fiduciary duties to the association and its members, the members should notify the board of its obligations and any corrective action requested. If this approach is unsuccessful, the members should consider a recall of the board as a last resort inasmuch as a recall election is almost always divisive in the community that is going through that process.

This article is intended to provide the members with the general requirements for a recall. Competent counsel should be consulted for assistance with the technical aspects of a recall.