

Homeowner wants to change the HOA board

By Michael Hunter
Association Answers

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Q. We have a homeowners association that refuses to give documents to homeowners, grants board members architectural changes after refusing others the same changes, and has suspect practices in their elections. They even wanted candidates for the board to sign a gag order so that, if they were elected, the candidate could not criticize the board. The company assisting them is a partner to their activities, so is of no help. Their concerns do not reflect the wishes of the people living here and they basically rig the elections with the proxy votes so no one new can get on the board. They claim everything they do is legal and the homeowner has no rights when it comes to their decisions.

My question: Where can I turn to get help to change the activities of this group?

Another writer recently asked what to do when their board refused to let members attend meetings. The following answer applies to that situation, too.

Most HOAs are organized as nonprofit corporations. That means the members of the board of directors are there because they were elected by the members. If enough members are dissatisfied with the actions of the board, then they shouldn't re-elect the directors that they disagree with.

There is nothing to prevent you from soliciting proxies from your neighbors in advance of the next annual meeting to gather enough voting power to elect the candidate(s) of your choice.

Another option is holding a special meeting to remove one or more board members from office. You should review your bylaws and follow the procedures outlined for the removal of directors. This usually requires a written request by a certain percentage of members (typically 20 percent) to the president to call a special meeting for that particular purpose.

State law says: "Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant."

Depending on what your bylaws say, the vacancies created by the removal of board members are filled either by a vote of the homeowners, or by appointment by the remaining board members.

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Your third option is to file a lawsuit against the board members for breach of fiduciary duty, and seeking an injunction requiring the board members to follow the dictates of the HOA's bylaws and state law. However, litigation of this type can be very expensive for both sides, and can drag on for months or years.

The best option might be to rally a group of concerned homeowners and request a meeting with the board members to air your grievances. State law requires that, "At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns." The board is allowed to place reasonable restrictions on how many people speak on each side of an issue, and to place reasonable time restrictions on those who speak.

There is strength in numbers, so I would encourage you to "rally the troops" in support of your cause before requesting a meeting with the board. Good luck to you.

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