

The board booted me out – but can they?



A reader writes that he was voted off the board of directors of his neighborhood association. On investigation, it turned out that the board didn't have the right to remove him. The director was reinstated. What are the rules about removing a director of a nonprofit organization?

In order to answer this question, you have to know:

1. What your state law says about nonprofit boards
2. What your bylaws say about your organization
3. What Robert's Rules of Order says on this point

Let's look at each of these aspects of removing a nonprofit director in turn.

STATE LAW ABOUT REMOVING A DIRECTOR

Often people neglect to pay attention to the laws of the state in which they are incorporated. State law governs here, so if there is reference in the relevant statute to removing a director from the board, that will be your first point to consider.

For example, is there reference to "cause" in the law, or does a board have freedom to make its decision "for any reason deemed sufficient to the directors" or "when in the view of the directors the organization is best served by the removal"? In the first instance, the board must be able to demonstrate a sufficient reason for removing the director. In the second instance, the board has freedom to act as it thinks best.

BYLAWS ABOUT REMOVING A DIRECTOR

Bylaws may speak about this this. Whatever the bylaws say must conform to the requirements of state law. There is a principle that should be written into your bylaws, though it is not always included: **the body that selected the director for the board is the body that has the right to remove him or her.**



So if the members of your nonprofit elect the directors, only the members can remove them. This can be a challenge if you have a difficult director whom you would like to remove, because you'll need to hold the equivalent of a "recall election" to do so. Robert's Rules gives details.

On the other hand, if the board itself selects its members, then the board has the right to remove a director, provided whatever process set down in the bylaws is observed.

We recommend that nonprofit organizations in which the board appoints its own members include a provision in their bylaws authorizing the board to remove a director by a majority of the entire board (all directors in office) for any reason deemed sufficient to the board of directors.

- Omitting a requirement for "cause" prevents nasty and subjective arguments that could end up in court.
- The requirement for a majority of the entire board means that a goodly number of the directors must agree that this drastic action is necessary.

ROBERT'S RULES OF ORDER ON REMOVING A DIRECTOR

Robert's Rules of Order Newly Revised, 11th edition, the official text of Robert's Rules, explains the issue on p. 574, and describes the process to be followed on pp. 653-654, "Removal from Office." A key point to consider is the language of the bylaws under which the individual was elected. If there is no other provision in the bylaws about this, then Robert's Rules offers the following guidance:

If the bylaws say, "**elected for a term of xxx years OR UNTIL THEIR SUCCESSOR IS ELECTED,**" then the director can be removed by the adoption of a motion to do so—see Robert's Rules for details.

On the other hand, if the bylaws say, "**elected for a term of xxx years**" or "**elected for a term of xxx years AND UNTIL THEIR SUCCESSOR IS ELECTED,**" then the director can be removed only for cause—that is, neglect of duty in office or misconduct. The organization must follow the procedures specified on pages 654-669, "Investigation and Trial." This is an arduous process that should only be undertaken if there is no alternative.

It's surprising that a single conjunction, "OR" versus "AND," makes such a difference!

Here is a helpful explanation by Daniel H. Honemann, a member of the authoring team for *Robert's Rules of Order Newly Revised, 11th edition*:

"If the bylaws provide that officers shall hold office for a term of one year and until their successors are elected, the bylaws assure them that they are to serve at least for one year, and perhaps longer. On the other hand, if the bylaws provide that officers shall hold office for a term of one year or until their successors are elected, the bylaws give them no such assurance, since the election of their successors may take place at any time, either before or after the expiration of one year."

Finally, if it is the president whom you wish to remove from office, you will likely need professional advice from someone knowledgeable about Robert's Rules of Order and the law.

Has your board faced such a situation? [Let us know!](#)

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