

## MEMORANDUM

To: Tim Purnell

From: Carrie

Re: Arrowood HOA, Removal of a Board Member who holds an office

Date: July 27, 2006

### Question Presented

1. Whether the Board has the right to remove a fellow member from the board, or simply from office (i.e. positions such as President, Secretary, Treasurer, etc.)?
2. Whether the process set out in the email from Sharon Jones adequately states the process that should be followed by the Board of Directors once they have received a petition to remove a Board member?
3. What should be done if in a vote for a new Director a tie is reached?

### Short Answer

1. The Board has the right to remove a fellow member from the board only if such member has not attended three consecutive meetings. Thereafter, the Board can choose a replacement to fill that vacancy. The Board has complete control over the removal of any officer from his position, even without giving a reason.
2. I would suggest calling a special meeting and having the members vote to determine whether to remove a board member. The Bylaws allow for only two types of voting in the Bylaws by the Members of the Association, in person or by proxy with the proxy being a live person at the meeting that votes. As there is no mention of mail in ballots being allowed, then I do not think that voting should be done in that manner.
3. In the rare chance that a tie vote does occur, then the answer is simple. Article IV, Section 3 of the Bylaws require that a Majority of the votes of the Members of the Association be obtained to remove a board member. A vote of 50% is not a majority. As the requirement is not met, the Board member cannot be removed through an action by the Members of the Association.

### Discussion

#### *1. Removal of a Member of the Board from Both the Board and an Office*

Article IV, Section 3 states that Any director may be removed from the Board,

with or *without cause*, by a majority of the votes of the Members of the Association.” This suggests that a vote of the members of the association can remove a director from the board without stating a cause. The Bylaws also state that “in the event of death, resignation or *removal* of a single Director, the Director=s successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his or her predecessor.A So, after a “majority of the votes” of the Members is obtained, the Board can choose someone to replace the director that was removed. It is only when more than one vacancy occurs at the same time that a Special Election by the Members of the Association is necessary to appoint a person to the position until the term of the predecessor is up.

If however, the Board member in question has been absent from three consecutive regular meetings of the Board of Directors, then, under Article VII, Section 1(d), the Board of Directors can “declare the *office* of a member of the Board of Directors to be vacant.” This gives the Board of Directors the ability to find a Director position empty. While this language does seem to imply that the Board can only remove the Director from his *office*, I would instead suggest that section gets to the actual position as a Board of Director member. This reasoning comes from the fact that not all officers are required to be members of the Board of Directors. Article VIII, Section I of the Bylaws states that a president and vice president must at all times be a member of the Board of Directors, but does not set this requirement for the secretary and treasurer. Further, the Bylaws also provide in Article VIII, Section 6 for the removal of any officer by the board without cause. It would be redundant and pointless to allow the Board complete control over the officers and then have a section stating that if an officer has not attended three meetings then his position can be declared vacant.

The Board of Directors is given the very specific power to declare vacant from his position a Director who has not been present for three consecutive meetings. This “vacancy” language does appear in Article IV of the Bylaws and seems to incorporate the “death, resignation, or removal” that would result in an open position on the Board of Directors. Under this rationale, the Board could thus remove the Director from his office for not attending three meetings and then fill that spot on the Board all without involving a vote by the Homeowners.

## *2. Review Steps for taking Appropriate Measures to Replace a Board of Directors Member*

There are no actual guidelines in any of the documents that would give the exact process that must be followed for the Members of the Association to vote to remove a Director from office. I would suggest that instead of mailing ballots and presenting the vote in that matter, that a special meeting be called by the president or the Board of Directors under the provisions of Article III Section 2 of the Bylaws. Article III Section 5 states that “a vote may be cast in person or by proxy.” There is no mention of allowing votes to be done by a mail in ballot. The process to amend should therefore be as follows:

- a. If the Board believes it necessary to replace some of its members, then a special meeting should be called by a quorum of the Board, or the President may call the special meeting. If, as has been stated in the email, there is a petition from the members of the Association for Board members to be removed and such petition should include a statement requesting a special meeting for the purposes of having a vote, then, if one-fourth (1/4) of membership supports such petition, a meeting should be called.
- b. The Secretary should then give notice of the Special Meeting at least 15 days and no more than 60 days before such meeting should be held. Such notice should be mailed, postage prepaid, to each member entitled to vote and addressed to the person's last known address. The notice should include information as to the place, day and time, and purpose of the meeting. *See* Article III Section 3 of the Bylaws.
- c. A "majority" of the members (at least 51%) must then be present at the meeting and willing to vote yes in order for such decision to be binding. It is not necessary for all Members to have a vote so long as a clear majority of the total members who are eligible to vote are present and have done so. If at least 51% of the homeowners are not present, then the meeting should be adjourned until enough homeowners are present. If, on the other hand, 51% are present but not enough people vote yes, then the vote has ended without the number of votes being cast that would be necessary to remove the Board member. Article III, Section 4 states that a quorum necessary for a vote by the Association is 1/10 "except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws." As Article IV, Section 3 of the Bylaws states that a "majority of the votes of the Members of the Association" is necessary to remove a Director from the Board, the quorum would not be the 1/10 as stated earlier, but would instead be a "majority" of the votes, or 51%.
- d. The vote should then be governed by the same rules as for the election of a Member of the Board of Directors. Article V, Section 2 states that an election should be made by secret ballot that either the Members or their proxies should cast.

I would support having a Special Meeting called rather than doing a vote through mailed in ballots as the voting process does seem to be relegated to voting in person at a meeting or by having a proxy present at the meeting. The only mention of allowing for some sort of written request by the members is for allowing members to write and request a meeting of the Association for purposes of a vote.