



Removing Common Interest Community Association Board Members

BY MIRO KOVACEVIC

This article discusses how to remove members of a common interest community association's executive board.

Lately it seems that common interest communities (communities) are ubiquitously involved in litigation due, in part, to the alleged action or inaction of the community association's (association) executive board (board). There may be a better way to handle some of these disputes: seek removal of ineffective members of the board. The removal process offers a non-litigious and cost-effective way for concerned unit owners to effect immediate change in the handling of the community's affairs. It can also inspire community involvement.

From a legal standpoint, the removal process is modestly complex. The practical impediment is whether the party seeking to remove the board member has the fortitude and drive to obtain the requisite community support to achieve this objective.

To properly advise clients seeking board member removal, practitioners must understand the protocol for removal and anticipate potential impediments to a removal effort. This article describes the ins and outs of the removal process.¹

Why Remove a Board Member?

Generally speaking, removal is an appropriate option when unit owners are dissatisfied with their association's operation. This may occur, for example, where the board spends excessively on capital improvements and continually increases annual assessments, or it refuses to repair, replace, or properly maintain common elements. Any act or omission by the board that prompts a groundswell of attention by the association membership is an appropriate opportunity to seek removal of one or more board members. Of course, personal animosity is never a good reason to campaign to remove a board member who is voluntarily serving in a thankless position. Seeking to remove someone for personal reasons thwarts the sense of community that a removal

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vote can instill and is likely to fail, resulting in the waste of time, effort, and money.

Statutory Authority

A “common interest community”² is certain real estate described in a “declaration”³ that compels an owner of a “unit”⁴ therein to “pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration.”⁵

An “association” is a “unit owners’ association organized under C.R.S. section 38-33.3-301.”⁶ The association membership is made up exclusively of all unit owners.⁷ The association must be organized by the date the first unit in the community is conveyed to a purchaser, and it may be organized as a nonprofit corporation.⁸ In general, the association's most imperative charge is the maintenance, repair, and replacement of the common elements, unless otherwise provided in the declaration.⁹ An “executive board” is the body “designated in the declaration to act on behalf of the association.”¹⁰

Under the Colorado Common Interest Ownership Act, CRS §§ 38-33.3-101 et seq. (CCIOA),¹¹ the process for removing a board member differs according to the type of community¹² involved and when the community was created. The Condominium Ownership Act, CRS §§ 38-33-101 et seq. (COA), applies to “pre-existing” communities, which are condominiums¹³ created before July 1, 1992. The Colorado Revised Nonprofit Act (CRNA), CRS §§ 7-121-101 et seq., applies to non-condominium communities created before July 1, 1992. Regardless of the type of community, CCIOA applies to communities created on or after July 1, 1992.¹⁴ Communities created before July 1, 1992, may elect to be subject to all CCIOA provisions.¹⁵

Does the Removal Process Apply?

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the removal process may not be necessary if a board member was not properly seated on the board in the first place. This can happen in many situations, including where a board member was elected at a meeting that was not properly noticed (e.g., notice was issued too early or late, or was not sent to the entire membership)¹⁶ or lacked a quorum;¹⁷ or where a board member's addition violates the articles of incorporation or bylaws by exceeding the maximum number of allowed board members¹⁸ or not satisfying good-standing requirements.¹⁹ In these scenarios, the member was never technically on the board and thus need not be removed. Rather, the board should declare the position vacant and hold an election or make an appointment, depending on the circumstances.²⁰

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Assuming the board member is properly seated and the above automatic termination mechanisms do not apply, the board member may only be removed by following the applicable removal requirements for pre-existing or CCIOA communities.²⁴ While the statutory guidance for this process is helpful, it is relatively nominal for both pre-existing and CCIOA communities.²⁵ Thus, practitioners must pay close attention to the community's applicable and governing documents, especially its bylaws.²⁶

Removal for Pre-Existing Communities

Statutory guidance for removing a board member for pre-existing communities is limited. Under COA, the community's bylaws must contain “the method of removal from office of members of the board”²⁷ In other words, the bylaws dictate the protocol. Nonetheless, CCIOA subjects pre-existing communities to certain of its provisions,²⁸ namely “principles

of law and equity, including, but not limited to, the law of corporations,”²⁹ such as CRNA.

CRNA addresses removal³⁰ and provides that a board member elected by a voting group of members or the board³¹ may be removed by the voting members with or without cause, unless the bylaws provide that a board member may be removed for cause only.³² A board member elected by the voting members may be removed by the voting members “only at a meeting called for the purpose of removing that director, and the meeting notice shall state that the purposes, or one of the purposes, of the meeting is removal of the director.”³³ Except for cumulative voting, a board member may only be removed if the number of votes cast to remove would be sufficient to elect the board member.³⁴

If a board elects a board member,³⁵ which is virtually unknown in the context of residential communities,³⁶ the board may remove the elected board member if such member was not elected to fill a vacancy.³⁷ However, if the board member was elected to fill a vacancy, only the association members may vote to remove the board member without cause.³⁸

Removal for CCIOA Communities

The starting point for removing a board member for a CCIOA community is CRS § 38-33.3-303(8),³⁹ which provides:

Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a vote of sixty-seven percent of all persons present and entitled to vote at any meeting of the unit 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 or a member elected pursuant to a class vote under section 38-33.3-207(4).

Thus, there are two classes of board members for removal purposes: those appointed by the declarant, and those elected pursuant to a vote of the association membership. Generally speaking, if a declarant properly appoints a board member, only the declarant may remove such board member during the declarant control period.⁴⁰ The declarant's broad discretion here is limited by a compulsory statutory

protocol requiring the phased replacement of board members. A certain percentage of the board must be elected by the membership at large as defined percentages of units within the community are sold to third-party purchasers.⁴¹

Board members who are elected by the membership (as well as those appointed by the declarant but whose terms continue after declarant control ends) may be removed under CRS § 38-33.3-303(8) by a vote of 67%⁴² of all members present and entitled to vote at any meeting of the membership at which a quorum is present. For board members elected by a class vote under CRS § 38-33.3-207(7), the sole difference is that the vote is held by the appropriate class members only. Therefore, in CCIOA communities, the members may remove a board member with or without cause.⁴³

No other CCIOA provisions directly address removing a board member. Nonetheless, CCIOA, like COA, requires that the association's bylaws prescribe the "manner" by which a board member may be removed.⁴⁴ CRS § 38-33.3-303(8) provides a non-waivable manner by which a board member may be removed⁴⁵ but does not preclude the bylaws from prescribing non-conflicting alternative methods.

As stated above, and similar to pre-existing communities, CCIOA communities are subject to principles of law and equity, including the law of corporations, to the extent these do not conflict with CCIOA's terms.⁴⁶ Practitioners should thus become familiar with CRNA's relevant provisions, namely article 128, "Directors and Officers." As detailed below, these provisions offer useful gap-filling guidance when delving into the abyss of removing a board member in a contested vote.

Comparing the Removal Processes

The process for removing board members for pre-existing and CCIOA communities is similar, but two potentially significant differences must be considered before beginning the removal process.

First, a pre-existing community's bylaws may allow removal only for "cause," while CCIOA explicitly provides that a board member may be removed without cause.⁴⁷ What constitutes "cause" depends entirely on the bylaws, though

the standard for judicial removal of a board member under CRS § 7-128-109 provides persuasive guidance. This statute gives district courts authority to remove board members upon findings of fraudulent or dishonest conduct or, in the case of nonprofits, gross abuse of authority or discretion with respect to the nonprofit corporation.⁴⁸ Showing cause for removal will

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likely prove difficult and foster some acrimony within the community, which may increase the chance of litigation.⁴⁹

Second, the vote required for removal of a board member for a pre-existing community is the same as that required to initially elect the board member, which is usually a majority. On the other hand, CCIOA requires a "super-majority" vote of 67% of all association members in attendance in person or by proxy at the meeting.⁵⁰

The Forum

The removal of a board member in a pre-existing or CCIOA community is generally effected via a vote of the membership.⁵¹ This typically occurs at the association's annual meeting or a special meeting called for the explicit purpose of seeking to remove the board member.⁵²

Annual Meeting

Annual meetings for a community must occur at least once a year.⁵³ The association is required to cause notice of the meeting to be hand-delivered or sent via prepaid US mail⁵⁴ to its entire membership no fewer than 10 and no more than 50 days before the meeting.⁵⁵ The "notice *shall* state the time and place of the meeting and the items on the agenda, including . . . *any* proposal to remove" a board member.⁵⁶ Based on the statute's compulsory language, if a member submits a request to remove a board member before the association issues its notice of annual meeting, the association must include such proposal in the notice.

Special Meeting

Depending on the circumstances, waiting for the next annual meeting to remove a board member may be undesirable. In that case, association members may compel a special meeting to hold a vote to remove a board member. A special meeting may be called by the president, by a majority vote of the executive board, or by members "having twenty percent, or any lower percentage specified in the bylaws, of the votes in the association."⁵⁷

A demand for a special meeting should include a written petition that details the intent of the special meeting, including an agenda identifying by name each board member the group of members seeks to have removed⁵⁸ and evidence that the requisite number of members has joined in the demand. It is preferable to have the required number of members execute the same petition, but this may be impractical if many members support the call for the special meeting. Collective execution of the petition would be consistent with the more stringent, and therefore potentially inconsistent, requirements under CRNA.⁵⁹ CRS § 38-33.3-308(1) provides no guidance regarding what evidence is required

to show that the requisite number of members are calling the special meeting. Nonetheless, written evidence could include emails or a declaration by the person executing the petition that he or she has obtained the consent of an adequate number of members to call the meeting, though any relevant requirements in the association's governing documents must be satisfied. Practitioners should also consider including

- the desired date or dates for the special meeting, taking into account the time required for the association to draft and deliver notices;
- the method for holding the meeting (e.g., Zoom, in-person, or action by written ballot);
- the name of the individual who will chair the meeting;
- the ballot contents;
- the third party or committee that will count the votes; and
- the identities of the members who will audit the vote results.

The notice requirements for a special meeting mirror those of an annual meeting, which apply for both pre-existing and CCIOA communities.⁶⁰ Thus, not fewer than 10 and not more than 50 days before the special meeting, “the secretary or other officer specified in the bylaws shall cause notice to be” issued and posted.⁶¹ The notice must state the time and place of the meeting and the agenda items, including the proposal to remove an officer or executive board member.⁶²

CCIOA provides no guidance if the association fails to issue notice to hold the special meeting, which may occur when, for example, there is a dispute regarding whether an adequate number of members has called the meeting, or the board simply neglects its duties. CRNA, however, provides that if an appropriate demand for a special meeting is submitted and the association fails to issue notice thereof within 30 days of receipt, “a person signing the demand or demands may set the time and place of the meeting and give notice . . .”⁶³ Accordingly, the member submitting the petition for the special meeting should attach an additional demand for the association to produce a current list of members and their addresses.⁶⁴

CRNA alternatively provides that a court of competent jurisdiction may “summarily order” a meeting of the membership.⁶⁵ Any member who participated in the call of or demand for the special meeting has standing to seek such an order.⁶⁶

The Vote

Voting requirements must be achieved to successfully remove a director. Practitioners should ensure that clients understand how to meet a quorum, including by use of proxies; determine a record date; conduct a meeting properly; manage ballots; and count votes correctly.

Quorum

To convene a meeting where the membership may remove a board member, the association must achieve a quorum, which differs for pre-existing and CCIOA communities. For pre-existing communities, unless the bylaws provide otherwise, a quorum is met when 25% of the membership votes are present at the beginning of the meeting.⁶⁷ For CCIOA communities, unless the bylaws provide otherwise, a quorum is satisfied when members representing 20% of the votes that may be cast are present at the beginning of the meeting or, if the community has more than 1,000 unit owners, 10% are present.⁶⁸

Using Proxies

It is no secret that many communities suffer from member apathy. This can make it hard to obtain a quorum for a meeting. Members calling for a special meeting to remove a board member thus have their work cut out for them to ensure that a requisite number of members appears at the meeting to satisfy quorum requirements and, in CCIOA communities, that they have adequate votes to carry the 67% super-majority vote to remove.

Unless the bylaws prohibit it, a quorum may be met by the prescribed number of members appearing in person or by proxy,⁶⁹ and a member is entitled to act at a meeting in person or by proxy, which is a document that grants a person authority to do something.⁷⁰ In the context of a community, a proxy is a writing that an owner

provides to another person that authorizes the other person to act on behalf of the owner in accordance with its terms. In advance of the special meeting where the vote to remove will be held, the members calling the meeting should “pound the pavement” to obtain as many proxies as possible, starting when they obtain the petition demanding the special meeting.

CCIOA provides guidance for both pre-existing and CCIOA communities on proxy requirements.⁷¹ It is important to adhere to bylaws and statutory proxy requirements because the association may reject a proxy if it has a good faith basis to “doubt . . . the validity of the signature on [the proxy] or . . . the signatory’s authority to sign for the unit owner.”⁷²

Under CCIOA, a proxy must be “duly executed” by the member and dated.⁷³ Unless otherwise defined in the association’s governing documents, a proxy appointment must “substantially” conform to CRS § 7-127-203,⁷⁴ which provides a list of ways to appoint a proxy.⁷⁵ This may be done, for example, by a member or the member’s attorney-in-fact executing an appointment form; or a member electronic communication “providing a written statement of the appointment” to the “proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy,” or the association.⁷⁶

A proxy is effective against the association when received, including via electronic transmission.⁷⁷ Thus, proxies should be submitted to the association in advance of the meeting, which is usually required by the association’s governing documents.

A proxy is not valid if obtained by fraud or, by its terms, “purports to be revocable without notice.”⁷⁸ It may be revoked only by “actual notice of revocation to the person presiding over a meeting of the association,”⁷⁹ and it terminates 11 months from its effective date, unless the proxy provides otherwise.⁸⁰

Practitioners should review the association’s bylaws and any other rules or regulations addressing proxy requirements. Practitioners should also consider whether the proxy should be (1) a directed proxy, through which the member directs the proxy on how to vote on a

particular matter; or (2) a general proxy, which normally authorizes the proxy to vote as he or she deems fit. As it pertains to a special meeting for removal, circumstances such as the visibility and salesmanship abilities of the community members seeking the removal will dictate which proxy form may best fit the situation.

Record Date

In some communities, ownership changes hands on a regular basis, which makes it hard to determine who should be given notice and have the authority to vote at an association meeting. Associations use a “record date” to address this situation.

A record date is the cut-off date to establish which members are eligible for notice and to attend and vote at a meeting. CCIOA is wholly silent on the topic. CRNA sets out a detailed mechanism for determining the record date.⁸¹ The association has discretion to include a protocol in its bylaws for determining the record date for members to receive meeting notices.⁸² If the bylaws fail to identify a protocol, the board is authorized to fix the record date.⁸³ If the board does not do so, the “members at the close of business on the business day preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting.”⁸⁴

The association’s bylaws may also provide a method for determining the record date.⁸⁵ If the bylaws do not so provide and a date is not otherwise fixed, “members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.”⁸⁶

In any event, the record date may not be more than 70 days before the meeting date.⁸⁷

Conduct of Meeting

A question that commonly arises in the context of a meeting where members seek to remove a board member is who should preside over the meeting, or the removal vote part of the meeting at an annual meeting. There is virtually no statutory guidance regarding who is authorized to chair an annual or special meeting, but a bylaw provision prescribing such authority would likely be enforceable.⁸⁸ In practical terms, allowing a

board member to preside over a meeting where he or she is subject to a removal vote is less than ideal.⁸⁹ Board members who are identified to run the meeting where they are subject to removal should recuse themselves from chairing at least that portion of the meeting, and an independent member should be designated as the chair.

Ballots

Written ballots may be used at in-person meetings and those held remotely. In-person meetings are sometimes not feasible, however, and meetings conducted via electronic means may not be desirable for a host of reasons (e.g., the potential for technical difficulties). CRNA thus provides for action by written ballot in lieu of a meeting.

CRNA provides that, unless prohibited by the bylaws, “any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the [association] delivers a written ballot to every member entitled to vote on the matter.”⁹⁰ CRNA includes specific requirements for the contents of the written ballot and the accompanying solicitation.⁹¹ It is unclear whether members calling for a special meeting can compel the association to hold the removal via written ballot without some authority in the bylaws. Nonetheless, such an action could either assist or hinder the members seeking removal, depending on the circumstances. The association should issue a written ballot when a removal vote is held at a meeting.

Ballots must be maintained as an association record for at least one year after the vote.⁹² Using ballots helps avoid future disputes over the number of votes cast orally. The ballot should provide the name of each board member subject to removal with an option to vote for or against removal.

During the COVID-19 pandemic, annual and special meetings were required to be held via telecommunication mediums, where members merely logged on. Although logging on can help satisfy quorum requirements,⁹³ it is questionable whether a member who logs into a meeting but does not vote for or against removal should be counted for purposes of the vote. Thus, to ensure that the vote only includes members who are

“present,” meetings held via telecommunication should offer an “abstention” option for a vote. A member’s vote to abstain will have the effect of a “no” vote for removal. If a member fails to vote for or against removal, and fails to abstain, such member should be deemed no longer present and not included in the final vote count.

Counting Votes

Ballots of all votes must be “counted by a neutral third party or by a committee of volunteers.”⁹⁴ This neutral party must be “selected or appointed at an open meeting, in a fair manner, by the chair of the board or another person presiding during that portion of the meeting.”⁹⁵ CCIOA does not define “fair manner,” but the petition should address the process by which the neutral third party will be appointed, and the parties should negotiate the counting process and who will be appointed as neutral third parties before the meeting.

Announcing Results

Once the vote is held, the association should promptly announce the results. In large communities, this may take until the next day, but it is important to issue the results as soon as practicable. In addition, to ensure transparency, the members who demanded the removal vote should issue a notice to inspect the proxies and ballots in advance of the meeting. This allows for review of irregularities as soon as possible.

Filling the Vacancy

If the membership votes to remove a board member, the association should move to elect a replacement board member. This could occur immediately after the vote to remove, if it does not violate any applicable bylaws provisions, such as nomination protocols. Under typical circumstances and routine bylaws provisions, the association must issue notice for a separate future meeting where a replacement board member would be elected.


It is unclear whether the association must hold a membership vote to elect the replacement board member. Indeed, CCIOA and CRNA contemplate that the board may have authority to fill the vacancy created by a removal vote unless otherwise provided for in the bylaws.⁹⁶ Although

boards rarely fill vacancies, it is an important potential outcome that practitioners should analyze before starting the removal process.

Removal Disputes

Not surprisingly, removal votes are hotly contested. An aggrieved party is entitled to initiate litigation to seek relief concerning the removal vote.⁹⁷ Alternatively, the association's governing documents may compel alternative dispute resolution concerning such disputes. If a dispute arises, the prevailing party is entitled to recover attorney fees and costs.⁹⁸

Conclusion

Removing a community association's board member can be contentious, but it allows unit owners to effect change in their communities without litigation. The removal process follows statutory authority that centers on the community's creation date and the association's corporate form. The success of the endeavor is largely driven by the unit owners' resolve to remove a board member. Practitioners can facilitate this success by advising unit owner clients to follow the technical requirements outlined above. 



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NOTES

1. The term "recall" is generally used to describe efforts to remove elected governmental officials. However, the statutes discussed in this article don't use the term, so "removal" is used instead.
2. CRS § 38-33.3-103(8).
3. CRS § 38-33.3-103(13).
4. CRS § 38-33.3-103(30).
5. CRS § 38-33.3-103(8).
6. CRS § 38-33.3-103(3).
7. CRS § 38-33.3-301. References to "unit owners" and community "members" are used interchangeably in this article.
8. CRS § 38-33.3-301. An association may also be organized as a for-profit corporation or as a limited liability company (LLC). *Id.* However, these types of communities are exceedingly rare. See *2A Colo. Prac. Methods of Practice* § 74:2 (West's Colo. Practice Series 7th ed). Therefore, removal of a board member from a for-profit corporation or LLC is beyond the scope of this article. Nonetheless, to the extent a for-profit corporation or LLC manages a community created on or after July 1, 1992, CCIOA controls removal efforts. See CRS § 38-33.3-301 ("Neither the choice of entity nor the organizational structure of the association shall be deemed to affect its substantive rights and obligations under [CCIOA]."). And practitioners should be familiar with the relevant provisions of the Colorado Business Corporation Act, CRS §§ 7-101-101 et seq., and the Colorado Limited Liability Act, CRS §§ 7-80-101 et seq. See, e.g., CRS § 7-108-108 ("Removal of directors by shareholders."); CRS § 7-80-402 (providing that an LLC's managers may be removed by the consent of a majority of the members). *But see* CRS § 7-80-108 (authorizing LLCs to modify the operating agreement to change the manner by which management may be removed).
9. See, e.g., CRS § 38-33.3-307.
10. CRS §§ 38-33.3-103(16) and -301(1).
11. CCIOA provides that a community is created on the date that the community's declaration and map or plat, as applicable, are recorded. CRS § 38-33.3-201(1).
12. See, e.g., CRS § 38-33.3-103(9), (10), (18), (21.5), and (22) (defining common interest communities to include, respectively, condominiums, cooperatives, leasehold common interest communities, phased communities, and planned communities).
13. CRS § 38-33-102.
14. CRS §§ 38-33.3-115 and -117.
15. See CRS § 38-33.3-118.
16. See, e.g., CRS § 38-33.3-308(1).
17. See CRS § 7-127-205(3) (providing that if a quorum is present, action on the matter is approved if the requisite number of votes is obtained).
18. See CRS § 38-33.3-306(1)(a) (requiring an association's bylaws to provide for the number of board members).
19. CRS § 38-33.3-306(1)(c) (providing that the association's bylaws must provide the board member qualifications). See *Colo. Homes, Ltd.*

- v. Loerch-Wilson*, 43 P.3d 718, 721-22 (Colo. App. 2001) (holding that an association owes a fiduciary duty to enforce and act within the constraints of its governing documents as written); *Fort Lyon Canal Co. v. Catlin Canal Co.*, 642 P.2d 501 (Colo. 1982) (holding that an entity's bylaws are a contract between the entity and its shareholders/members); *Lion Square Phase II and III Condominium Ass'n v. Hask*, 700 P.2d 932, 934 (Colo.App. 1985) (holding that an association's conduct in contradiction to its governing documents is ultra vires); *In re Interrogatory on House Bill 21-1164 Submitted by Colo. Gen. Assembly*, 487 P.3d 636, 648 n.1 (Colo. 2021) ("Under Colorado law, ultra vires acts are considered void.").
20. If the board refuses to declare the applicable position vacant, the remedy is to commence litigation to obtain declaratory and/or injunctive relief.
21. CRS § 7-128-107(1)-(2).
22. CRS § 7-128-105(5). See also MacGregor, *Colorado Community Association Law: Condominiums, Cooperatives, and Homeowners Associations*, § 7.8 (Bradford Pub. Co. 2011).
23. A board member can become disqualified if, for example, ownership is a board member requirement and the board member sells his or her unit, or the board member fails to meet attendance requirements. See, e.g., CRS § 38-33.3-306(1)(c) (requiring that the bylaws governing the common interest community provide for the "the qualifications, powers and duties, and terms of office of, manner of electing and removing executive board members").
24. Interestingly, none of the statutes applicable to a community executive board explicitly provides that death terminates a board member's term. Thus, a board member's term may arguably continue despite death unless the bylaws explicitly provide otherwise, or death causes disqualification for things like attendance requirements.
25. MacGregor, *supra* note 22 at § 7.11.
26. *Id.*
27. CRS § 38-33-106(3)(a).
28. CRS § 38-33.3-117.
29. CRS § 38-33.3-117(1)(c) (subjecting pre-existing communities to CRS § 38-33.3-108) and (1)(l) (subjecting pre-existing communities to CRS § 38-33.3-319).
30. CRS § 7-128-108 ("Removal of directors").
31. See CRS § 7-128-104 (describing the process by which a board member may be elected by the board). Election of board members by the board is uncommon in the community context.
32. CRS § 7-128-108(1)(a). See also CRS § 7-128-108(1)(b) (providing that a board member elected by a voting group of members may only be removed by the voting group).
33. CRS § 7-128-108(1)(d). An entire board may be removed via this process as well. CRS § 7-128-108(1)(c).
34. CRS § 7-128-108(1)(c).
35. CRS § 7-128-108(1)(f); MacGregor, *supra* note 22 at § 7.11.
36. There is potential tension between CRNA's

explicit acknowledgement of the fact that the board can elect a board member (CRS § 7-128-108(1)(f)) and CCIOA's requirement that the unit owners must elect board members as declarant control expires (CRS § 38-33.3-303(7)). No published case in Colorado currently addresses this issue. But because CCIOA's provision applies only to CCIOA communities (see CRS § 38-33.3-117), there is arguably a prospective legislative intent to restrict the "election" of boards to member votes.

37. CRS § 7-128-108(1)(f).

38. *Id.*

39. Subsection (8) does not apply to pre-existing communities. See CRS § 38-33.3-117(1)(i.7), (1.5)(h), and (1.8).

40. "Declarant control" is a time period during which the declarant may appoint and remove officers and directors. See CRS § 38-33.3-303(5)(a).

41. CRS § 38-33.3-303(5)(a)(i) and (6).

42. CCIOA is based on the Uniform Common Interest Ownership Act (UCIOA), which was promulgated in 1982. UCIOA initially provided for a super-majority vote to remove a board member but provided no relevant commentary. See UCIOA § 3-103(g) (1982). UCIOA was amended in 2008 to remove the super-majority requirement and now permits a majority vote at a meeting where a quorum is present to remove a board member. See UCIOA § 3-122(a) (2008) and (2014).

43. To the extent the vote to remove a board member is held at a meeting of the membership, the notice must include such a proposal. CRS § 38-33.3-308.

44. CRS § 38-33.3-306(1)(c).

45. See CRS § 38-33.3-303(8) (providing that notwithstanding any provision within the association's governing documents "to the contrary, the unit owners . . . may remove . . .").

46. CRS §§ 38-33.3-108 and -319.

47. Compare CRS § 7-128-108(1)(a) with CRS § 38-33.3-303(8).

48. CRS § 7-128-109(1) (providing a district court authority to remove a board member "if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the nonprofit corporation, or a final judgment has been entered finding that the director has violated a duty set forth in part 4 of this article [CRS §§ 7-128-401 et seq. (Standards of Conduct)], and that removal is in the best interests of the nonprofit corporation.").

49. See MacGregor, *supra* note 22 at § 7.11.

50. Compare CRS § 7-128-108(1)(c) with CRS § 38-33.3-303(8).

51. While the CRNA contemplates that a board member may be elected by a board, this is virtually unheard of in communities. CRS § 7-128-108(1)(a). Further, because CRNA and CCIOA both provide by default that a board member who is elected by a voting group of members may only be removed by such voting group, this article focuses only on the mechanics and requirements of the

membership vote to remove a board member. See CRS §§ 7-128-108(1)(d) and 38-33.3-303(8).

52. CRS §§ 38-33.3-303(8) and 7-127-109.

Further, a board member could in theory be removed by an action without a meeting pursuant to CRS § 7-127-107, but this would require a unanimous vote of the membership, which is unlikely.

53. CRS §§ 38-33.3-308(1) and -117(1.5)(i) (providing that section 308(1) applies to all communities created before July 1, 1992, with respect to events and circumstances occurring on or after January 1, 2006).

54. In addition to hand or mail delivery, a unit owner may "opt in" to receive notice via electronic means, including email. CRS § 38-33.3-308(2)(b)(i).

55. CRS § 38-33.3-308(1).

56. *Id.* (emphasis added).

57. CRS §§ 38-33.3-308(1) and -117(1.5)(i).

58. In some cases, the board member named in a removal petition resigns, thus permitting the remainder of the board to fill the vacancy. To avoid this possibility, the petition should name the board member and his or her "successors."

59. CRS § 7-127-102(1)(b) (A nonprofit must hold a special meeting of its members "[u]nless otherwise provided by the bylaws, if the nonprofit corporation receives one or more written demands for the meeting, stating the purpose or purposes for which it is to be held, signed and dated by members holding at least ten percent of all the votes entitled pursuant to the bylaws to be cast on any issue proposed to be considered at the meeting." (emphasis added)).

60. CRS §§ 38-33.3-308(1) and -117(1.5)(i).

61. CRS § 38-33.3-308(1).

62. *Id.*

63. CRS § 7-127-102(3).

64. Compare CRS § 38-33.3-317(1)(e) (requiring an association to retain as a record the "names of unit owners in a form that permits preparation of a list of the names of all unit owners and the physical mailing addresses at which the association communicates with them, showing the number of votes each unit owner is entitled to vote") with CRS § 38-33.3-317(2) and (5) (authorizing members to demand to be furnished with an electronic version of association records).

65. CRS § 7-127-103(1).

66. CRS § 7-127-103(1)(b).

67. CRS § 7-127-205(1)-(2).

68. CRS § 38-33.3-309(1).

69. CRS § 38-33.3-309.

70. CRS § 7-127-203. *Black's Law Dictionary* at 568 (2d Pocket ed. 2001).

71. CRS §§ 38-33.3-310(2)(a) and -117(1.5)(j).

72. CRS § 38-33.3-310(2)(c).

73. CRS § 38-33.3-310(2)(a)-(b).

74. CRS § 38-33.3-310(2)(a).

75. CRS § 7-127-203(2) ("Without limiting the manner in which a member may appoint a proxy to vote or otherwise act for the member, the following shall constitute valid means of

such appointment . . .").

76. CRS § 7-127-203(2)(a)-(b).

77. CRS § 7-127-203(3).

78. CRS § 38-33.3-310(2)(a)-(b).

79. CRS § 38-33.3-310(2)(b).

80. *Id.*

81. CRS § 7-127-106.

82. CRS § 7-127-106(1).

83. *Id.*

84. *Id.*

85. CRS § 7-127-106(2).

86. *Id.*

87. CRS § 7-127-106(4).

88. See CRS § 7-128-302 ("Each officer shall have the authority and shall perform the duties stated with respect to such office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to such office by the board of directors or by an officer authorized by the board of directors.").

89. MacGregor, *supra* note 22 at § 7.5 ("In practice, actions of the board chair or person presiding over the meeting [where a removal vote is held] are invariably considered suspect by some group of the owners.").

90. CRS § 7-127-109(1) (emphasis added).

91. CRS § 7-127-109(2) and (4).

92. CRS § 38-33.3-317(1)(n).

93. See CRS § 38-33.3-309(1) ("Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent, or, in the case of an association with over one thousand unit owners, ten percent, of the votes which may be cast for election of the executive board are present, in person or by proxy at the beginning of the meeting." (emphasis added)).

94. CRS § 38-33.3-310(1)(b)(i)(C).

95. *Id.*

96. CRS § 38-33.3-303(3)(a) ("The [board] may not . . . elect members of the [board] but the [board] may fill vacancies in its membership for the unexpired portion of any term."); CRS § 7-128-110(2).

97. CRS § 38-33.3-114(2) ("Any right or obligation declared by this article is enforceable by judicial proceeding."); CRS § 38-33.3-117(1)(d) (subjecting pre-existing communities to CRS § 38-33.3-114).

98. CRS § 38-33.3-123.