

# GOOD SENSE GOVERNANCE

*Legal Affairs & Association and MLS Governance*

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## BOARD OF DIRECTORS

### IN A NUTSHELL

1. The board of directors is the governing body and establishes the policy directives of an organization.
2. The board of director's structure should be outlined in an organization's bylaws, including size, term limits, and election process.
3. Organizations should establish a process to identify qualified candidates to serve on the board of directors.

### NUTS AND BOLTS

In general, the board of directors has full authority over the internal affairs and manages the assets of an organization. As discussed in the [Good Sense Governance on Fiduciary Duties](#), individuals serving as directors or officers owe fiduciary duties to the organization, which includes a duty of care, loyalty, confidentiality and obedience.

#### **Size of the Board of Directors**

An organization's bylaws should establish the size of the board of directors which generally consists of elected officers as well a specified number of elected directors. Provided the board consists of the minimum number of directors required by state law, an organization may set the number of directors that works best for the organization. When determining the board's size, organizations should consider selecting an odd number of directors to avoid a deadlock due to a tie-vote.

## **Identifying Candidates**

State laws provide organizations wide discretion in establishing the qualifications and criteria for directors. Organizations should select qualifications that are reasonable, including a potential candidates' understanding and philosophical commitment to the organization's mission, their moral character, membership in the organization, and relevant work experience and skills. Some organizations establish a requirement that directors on the board come from a variety of interests or geographic areas, which helps establish a diverse group that can offer unique perspectives on issues pertaining to the organization. Whichever board qualifications an organization chooses to establish, the qualifications and selection process should be clearly stated in the bylaws or in a separate policy manual. Keep in mind that for REALTOR® associations, NAR policy requires REALTORS® whose membership, whether primary or secondary, is in good standing be entitled to hold elective office in a REALTORS® association.

Here are some methods commonly used for identifying nominees:

### 1. Nominating Committee

A nominating committee serves to help identify and screen potential candidates for election to an organization's board of directors. As part of the committee's screening process, the committee may interview potential candidates and consider items such as a candidate's background, skills and abilities, as well as the candidate's understanding and passion for the organization's mission and objectives. The committee would then recommend candidates for election based on its screening process.

The nominating committee's composition should be outlined in the bylaws or policy manual and should include a timeline for the announcement of the nominating committee's nominees.

### 2. Nominations from the Floor and by Petition

An association may allow nominations to be made from the floor of the board of director's meeting or by a petition signed by a specified number of eligible voting members. Organizations should require petitions to be filed before the election (generally 2-3 weeks) to allow for the advance notification of additional candidates on the slate.

## **Term Limits**

The association's bylaws should establish directors' terms and any term limits, such as a limit on the number of consecutive terms or maximum number of terms an individual can serve on the board (e.g., no director shall serve for more than two consecutive terms, or no director may serve more than three total terms). Directors typically serve terms of one to three years with a term limit of one to two terms. While it may be wise to have consistency on the board of directors, after a certain period of time directors may find it challenging to stay engaged in the same way they were when they first started. Term limits also allow more individuals to serve on the board of directors, as well as allowing for new ideas and fresh ways of thinking that may help move an organization forward. Organizations should consider staggering director terms to avoid all terms expiring in the same year. This allows for a smoother transition, as well as continuity of information.

### **Election of Directors**

An organization's bylaws should prescribe the election process, including when the election will take place and the method used for the election, such as by ballot, voice-vote or electronic vote, if permitted by state law. It is common practice for an organization to have the President appoint an Election Committee to conduct the election, but organizations are free to choose any election method that is consistent with state law. Keep in mind NAR policy provides that all REALTORS® who hold either primary or secondary membership in the association have the right to vote.

### **Removal of Directors**

State law or the organization's bylaws may allow for the removal of a director for specific reasons. However, more often, state law and/or the bylaws allow for the removal of the director only "for cause," which needs to be determined by the facts and circumstances in each particular case. It is also common for state law to require the body that elected the director be the same body that removes the director. Therefore, an organization considering the removal of a director should work with legal counsel in order to review and ensure compliance with state law.

## **ASSOCIATION ACTION**

- Consult legal counsel on state law to determine corporate requirements for a board of directors, including the minimum number of directors, and removal procedures.
- Review current bylaws and make any appropriate amendments to ensure compliance with state law, and to modify any necessary items, such as the board of director's structure, requirements for service or the election process.