



Removing Committee Members

What the owners giveth, the owners can taketh away!

By Michael Kleinschmidt

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How do you remove a voting Committee Member?

The Regulation Modules provide two ways that a sitting, voting committee member can be removed; each of them by ordinary resolution of the Body Corporate.

The most litigated, but the least used, is to remove the voting committee member for a breach of the Code of Conduct. It is an article of the Code of Conduct, in fact the first duty, that a voting committee member must have a commitment to acquiring an understanding of the Act, including the Code. Accordingly all voting committee members should be aware that if they are to be removed for a breach of the Code of Conduct the first step is for the Body Corporate to decide, by ordinary resolution (and therefore at a General Meeting) to give the committee member a written notice. That notice must state:

- That the Body Corporate believes the committee member has breached a stated provision of the Code of Conduct;
- Details sufficient to identify the breach, in not more than 600 words;
- That the voting committee member may give any other member of the Body Corporate, within a stated period of at least 21 days after the notice is given, a written response to the notice, which response must also not be longer than 600 words in length;
- That if asked by the voting committee member, the Body Corporate will pay the postage charges and photocopying costs reasonably incurred in sending out that written response; and
- That the Body Corporate is to consider a motion to remove the voting committee member for the breach of the Code of Conduct at the next General Meeting of the Body Corporate called after the response period ends.

After the notice has been given and the response period has ended, the Body Corporate may then propose to remove the voting committee member at a General Meeting by ordinary resolution. If the ordinary resolution is passed, then the voting committee member is removed from office.

The requirement to call two General Meetings, to provide a notice to the voting committee member and to give them a right of reply is perhaps what stops this method being used more often. On the other hand, it may simply be that the Code of Conduct is reasonably short and easy to comply with, so obvious and provable breaches of the Code are rare.

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The other method to remove a sitting voting committee member is simply to pass an ordinary resolution at a General Meeting to remove them. No breach of the Code of Conduct is required, no notice and right of reply is involved and neither is any breach of the Act required!

At a General Meeting at which a voting committee member is removed (whether for a Code of Conduct breach or otherwise) the committee member can be replaced.

Needless to say, removing sitting voting committee members is usually controversial. While there is a good deal of litigation as to the Code of Conduct breach removal method, more and more dispute resolution applications are being lodged about the removal of voting committee members using the second, simpler method. Taking into account the increasing body of Adjudicator's decisions on point, best practice currently appears to be:

- That one motion per voting committee member to be removed is required;
- That if the voting committee member is to be replaced at the same meeting they are removed, then one motion per new committee member to be appointed is required; and
- Removal and replacement of all voting committee members is permitted, provided that it is done in the correct order so as to ensure that there remains all necessary office holders and, if applicable, a quorum (of the committee).

As part of the current review of Queensland's Property Laws it is proposed that the Regulation Modules be changed so that there is only one method for removing a sitting voting committee member. That method would be:

- An ordinary resolution of the Body Corporate is required;
- After the agenda has been sent out for the meeting at which that motion will be considered, but before the meeting is conducted, the committee member the subject of the motion will have the right to circulate a statement to the Lot owners;
- That voting committee member proposed to be removed will also have a right to speak at the General Meeting prior to being removed; and
- If the voting committee member is removed, then they will have a right to lodge an application with the Commissioner for Body Corporate & Community Management to dispute the Body Corporate's decision.

At this stage there is no indication of the grounds the voting committee member would need to establish to obtain an order to overturn the Body Corporate's decision. If no specific grounds are detailed in the amending Act, then it is likely that the removed voting committee member would have to prove that the Body Corporate's decision was unreasonable.

If you are a
committee member
being removed, or
need to remove a
committee member,
Stratum Legal
can help you.

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