

## NEED TO APPOINT REPLACEMENT MEMBERS TO THE HOA BOARD?

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It should come as no great surprise that when filling vacancies on the board created by resigning or disqualified directors, the role of filling those vacancies is left to the remaining board members. California Corporations Code Section 7224 provides:

“(a) Unless otherwise provided in the articles or bylaws and except for a vacancy created by the removal of a director, vacancies on the board may be filled by approval of the board.”

This means that a vacant director seat is filled by the appointment of a member who is approved by a majority of the Board. But imagine you are the only director left? What then? Fortunately, the Corporations Code provides a solution. Of course, one must always first look to the association bylaws to see if another method of filling vacancies is provided. But in the great majority of situations, your bylaws will be consistent with the Corporations Code, or Corporations Code Section 7224 will be your guide.

Corporations Code 7224 (a) tells us that where the number of directors remaining in office is less than a quorum, the vacancies may be filled by:

- the unanimous written consent of the directors then in office;
- the affirmative vote of a majority of the directors then in office; or,
- a sole remaining director.

Thus, if you are the last director standing, you are in luck. You have the right (if not the obligation) to fill the vacancies left by the resigned or disqualified directors. Indeed, it is wise to do so if you are the remaining director. Proceeding to conduct association business on your own may leave you vulnerable to a challenge by the members or subject to liability should your decisions be questioned by a subsequent Board. This is especially true if there are members ready, willing and able to serve.

But imagine you have a 3 or 5-member board and one director resigns leaving an even number of directors who are at odds over whom to appoint or, worse, don't communicate with one another. Sound familiar? Certainly, there is little or no ability to transact any association business, let alone appoint a director. Continuing at a stalemate clearly is not in the best interest of the association and getting one side of the stand-off to agree to the other side's director selection may be a long shot. But if you find yourself in this situation, you are not without options.

For example, the directors could agree to a method or procedure of selecting members to fill the vacant director seats using an objective third party review, evaluation process, and having that objective third party make a recommendation to the remaining directors. Or, if your association's annual meeting and election is coming up, you could hold off trying to fill the vacancy until that time. But perhaps the best method to fill the board vacancy where the remaining directors are at odds is to hold a special membership election and let the members decide. Indeed, the Corporations Code specifies that the members may elect a director to fill a vacancy not filed by the directors.