



Does an Owner Have to Be in Good Standing to Run for the Board?

What if, during your annual meeting, an Owner who is delinquent or not in good standing is nominated for a vacant Board position? Can this Owner run for a Board position? Or are they prohibited for lack of good standing? The answer may surprise you.

Look to the Governing Documents

As it turns out, the Colorado Common Interest Ownership Act (CCIOA) does not contain a requirement that an Owner be in good standing with the Association to qualify for being a Board Member. Without guidance from CCIOA, your HOA's Governing Documents are the next place to turn to. Unless the Bylaws, Declaration, or other Governing Documents require an Owner to be in good standing, an Owner that is delinquent or in violation of the covenants can run for AND serve as a member of the Board of Directors. Naturally, this may not seem appropriate: how can an Owner who is not compliant with the covenants of the HOA become a Board Member and be in charge of enforcing the HOA's covenants on the members of the HOA?

Some governing documents provide that delinquent or covenant enforcement Owners lose their voting rights. While this may be an argument for not allowing such Owners to run, this is a vague argument that might not withstand court review.

Your HOA may decide that Owners in bad standing can still run for open Board positions, although this is not advisable. If your HOA views this as a potential issue, then the solution is to amend the Governing Documents and add a requirement of good standing for all Board Members.

If you need to amend your governing documents, please contact your legal counsel for guidance. It is likely that most Owners, Board Members, and even Managers might assume that being in good standing is already a requirement, and they may be surprised to find out otherwise. Therefore, amending the Bylaws or Declaration to include a good standing qualification may not be too controversial with the Owners.

Lastly, the Governing Documents can also be amended to address what happens when a currently serving Board Member becomes delinquent or is in violation of the restrictive covenants during their time on the Board.

Please remember: Colorado does not allow the Board to unilaterally decide on or change the Board of Directors' qualifications. Thus, this type of amendment to add the qualification of being in good standing would have to be approved by the majority of the Owners.

Things to Remember

If an Owner who is delinquent or is in violation of the covenants wants to run for a Board position, they can do so, unless your Governing Documents state otherwise. The first step is to check your current Bylaws, Declaration or other Governing Documents for any language pertaining to this issue. The next step, if your HOA wants to address such a situation, is to consider an amendment to the Governing Documents to include a qualification of good standing for Board Members. Such an amendment is an effective way to hold accountable both currently serving Board Members and Owners interested in being on the Board.

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