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## What to Do If Your Condo/HOA Board Is So Divided It Can't Fill a Vacancy

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You've heard it before, and it's true in condos and HOAs, too: The country is split, and compromise has become a bit of a dirty word.

So what happens when you have two camps in your community, and each is evenly represented on the board—and then suddenly, there's an open seat to fill?

In most states, either the law or the [governing documents](#) will provide for the board to appoint a member to the open position. Illinois is typical. "If a seat is empty, Illinois has two options for condos," explains [Michael Kim](#), of counsel at Schoenberg Finkel Beederman Bell Glazer in Chicago, who represents about 500 associations. "One is to have the remaining directors appoint a replacement."

But what if those board members can't agree on a replacement? Here, our experts offer some advice.

### The Struggle is Real

"This comes up regularly enough to be annoying," states Todd J. Billy, CCAL, an attorney at The Community Association Lawyers in St. Louis, who is licensed in Missouri and Illinois and has more than 1,000 active condo and HOA clients. "We've had two camps so entrenched they're not ever willing to do what they need to do, which is find a suitable candidate who works."

This stalemate is bad for communities. "Michigan law provides that when there's a vacancy, the remaining directors have the right to appoint a successor board member," explains Jeff Vollmer, a partner at Makower Abbate Guerra Wegner Vollmer PLLC, whose firm advises nearly 2,000 association clients throughout Michigan. "The problem is that deadlock isn't in the association's best interest. The deadlock probably extends to a lot of other issues as well that could prevent the community from moving forward."

Luckily for Kim, he's seen this, but it hasn't been a sign of complete and total dysfunction at an association. "I've never had to deal with that," he says. "I've

had very divided boards, but as a practical matter, in terms of the day-to-day operations, the division hasn't come to a point where they've stymied the association from operation."

Associations need boards that do their job, and this sort of impasse prevents that. "What makes an association work is a unified front, or what we call boards that work," notes Zulema Mendoza, LCAM, regional vice president at KW Property Management, who oversees about 20 condo and HOA communities in Southwest Florida and North Carolina. "Those are boards that work together and want to move forward for their organization."

How can you get to that place? Here are six ways to break the logjam:

**1. Appeal to board members' better nature.** "Our strong recommendation is that someone has to give in," says Vollmer. "You could explain to the board members that [holding an election](#) will [cost the owners money](#) and that being forced to hold an election would be giving a dangerous sign to the membership that decisions may not be being made timely. Both of those things are appropriate to point out."

Do board members give in when Vollmer spells those things out? "I'd like to say it happens with 100 percent frequency, but it doesn't," he admits. "More often than not, they dig in their heels and don't consent to that."

**2. Appoint an elder.** Billy means this in the sense of someone well-respected, not that the appointed has to actually be older in age. "If there's some resistance to the people board members are pushing to appoint, I like to suggest they find a prior board member who's well-respected," he suggests. "You sell it as helping the board get to five, seven, or however many members comprise a full board until the next election."

**3. Focus on issues where there can be agreement.** "Another way to help dial things back is to go back to the basics," suggests Billy. "Let's say board members have been fighting over something with the clubhouse. The board might say, 'We can't decide this, but we also can't keep fighting about it. So let's put that issue aside. Let's table it and go back to what there isn't an issue on, such as making sure our [minutes](#) are good, our [notices](#) are good, and that the [bills are paid](#).'"

"That time and space can end up creating the right answer," he states. "We had that problem in the early days of [COVID-19](#) with whether to open [pools](#). We didn't know the answers then, so I encouraged clients to keep their pools closed while we waited a little bit. Once we had more information, it was easier because we could follow the guidance local governments had provided."

**4. Have an election.** "When you do have that divided board, full transparency is what's required," suggests Mendoza. "Bring the issue to the membership and allow them to vote on that one board position. Or ask members to submit their resume, and the board can deliberate over those candidates and choose someone who's not affiliated with either of the two different camps."

That's also Vollmer's recommendation if his recommendation that board members compromise for the good of the community isn't followed. "If that can't happen, the board should put it to the membership to decide," he notes.

“Essentially, they hold a special election, and board will agree to appoint whomever the members want as a show of good faith to the community.”

An election would be an answer for Billy's clients, too. “In Missouri, the nuclear option would be if the board can't function because of what's going on, it may be time for the board or members to call a special election.”

But asking homeowners to run for the swing seat on a split board has its own challenges. “It's definitely hard to recruit people to run when there's a divided board,” admits Mendoza. “Nobody wants to be the deciding factor on a board; you'll influence the decision either way.”

Kim has seen that approach flop. “I had one situation with an evenly divided board in which the final seat was occupied by a person who was apparently willing to tell each side what they wanted to hear but afraid to take a stand,” he recalls. “That person never showed up for board meetings.

“That meant that each faction on the board knew that, unless they showed up to meetings, the other side could vote to do something they disagreed with,” says Kim. “That situation created the full attendance of the rest of the board. But even in that type of circumstance, the noncontroversial stuff is going to get done, particularly if you have [professional management](#) who can make sure bills are paid and the lights stay on.”

**5. Go to court.** If your documents don't provide for an election or you can't meet the requirements to call an election, it may be time to ask a judge for help. “In Illinois, if a petition for an election was filed by homeowners and ignored, under our nonprofit statutes, the board or owners could petition the local circuit court,” says Kim. “You'd allege that there's a deadlock and the corporation is in danger of being jeopardized in its operations. The court could order a special election or, in extreme cases, [appoint a receiver](#).”

**6. Amend your governing documents.** Fix this problem before it happens or before it happens *again* if you're currently in that jam. In some nonprofits, the [bylaws](#) say things like: If the board can't agree on an appointment within 30 days, the members will elect a person to fill the vacancy. That type of provision doesn't require that members or the board call a special election—the election is automatic.

But it's not a common provision in the bylaws Billy has seen in Missouri or Illinois. Nor is it common among Mendoza's clients. But she thinks such a provision might be valuable. “We don't see that in our governing documents, but that would be a great amendment for any association facing that difficulty,” she says. “It would make sense that the issue should go out to the membership for a vote.”

Yes, but Vollmer worries about the apathy he's seen in some of the communities he's advised. “That's an interesting concept,” he says. “I've never seen that, and it's something worth considering in the future. But we have a lot of apathy. So that might mean the board doesn't have enough time to appoint someone. And it could force an election that could generate more costs for homeowners without finding a successor.”