

## AMERICAN ACADEMY OF ACTUARIES

### *Board of Directors: Election; Resignation; Removal*

#### BOARD COMPOSITION

*(Prior to Bylaw changes in Secretary/Treasurer position)*

Per Article III (1) of the Bylaws:

*The Board shall consist of 29 Directors, comprising the nine Officers, the two immediate Past Presidents, and 18 elected Directors.*

These 29 are broken into categories with election, duties, and terms as defined below:

**Special Directors** (8<sup>1</sup>): Election by majority vote of Board  
Represent other U.S. actuarial organizations  
2 year term

**Regular Directors** (10<sup>2</sup>): Election by members (except majority vote of Board fills vacancy)<sup>3</sup>  
No special duties  
3 year term

**Officer Directors** (9): Election by majority vote of Board<sup>4</sup>  
Duties as specified in Bylaws or by tradition assigned by Board  
Consists of:  
President-Elect – with, effectively, 2 year term<sup>5</sup>  
President – effectively, 2<sup>nd</sup> year of President-Elect term  
Vice Presidents (6) – 2 year terms  
Secretary/Treasurer – 1 year term<sup>6</sup>

**Immediate Past Presidents Directors** (2): Effectively, this is the 3<sup>rd</sup> or 4<sup>th</sup> year of a President-Elect  
Duties are as specified in the Bylaws

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<sup>1</sup> The Bylaws specify not more than 8, so fewer Special Directors may be elected. If fewer than 8, then more Regular Directors would be elected by the members.

<sup>2</sup> Usually 10, but enough to bring number of “elected” directors to 18.

<sup>3</sup> Members elect Regular Directors to fill expiring terms – 3 Regular Board seats (or 4 every third year)

<sup>4</sup> The Board elects some classes of Directors to fill expiring terms. Typically, each year Board elections fill: 4 Special Director seats; 3 VP Director seats; President-Elect Director; Secretary/Treasurer Director for a total of 9. Together with member elected directors, 12 or 13 vacancies are filled each year.

<sup>5</sup> It might also be argued that an individual elected as President-Elect is elected to a 4 year term on the Board. However, after serving as President, the President-Elect automatically transitions into two terms as an Immediate Past President Director, a specifically identified separate director class.

<sup>6</sup> The Secretary/Treasurer term is implied as 1 year since this Officer Director is elected each year. No term is specifically stated in the Bylaws.

It seems clear that “officers” are merely a special class of director and that the Officer Director status is not separable. That is, it would be unreasonable to believe that an individual could, for example, resign an officer position without also resigning a director role.

This combination of officer and director is clearly allowed by the Act:

*108.50 (c) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation or any other person holding a particular office outside the corporation shall be a director or directors while he or she holds that office. Unless the articles of incorporation or the bylaws provide otherwise, such director or directors shall have the same rights, duties and responsibilities as other directors.*

A reasonable interpretation of this section of the ACT is that a person elected as an officer is effectively elected to a special class of director if the corporation’s bylaws make officers directors as the Academy’s does.

A Note: Although the Bylaws make reference to 18 “elected” directors, 10 elected by members and 8 elected by the Board, all of the directors are, in fact, elected. The Officer Directors are elected by the Board just as the Special Directors are. It might be argued that the President Director and the Immediate Past President Directors are not elected to those Board positions directly. However, those individuals are on the Board by virtue of an election process in a prior year.

### **TYPE OF CORPORATION**

Under the *Illinois General Not for Profit Corporation Act (Act)* the Academy is a 108.10(e) organization. This is because the Academy has several classes of directors as described above.

*108.10(e) The articles of incorporation or the bylaws may provide that directors may be divided into classes and the terms of office of several classes need not be uniform. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.*

### **RESIGNATION OF DIRECTORS**

Generally, the Academy Bylaws accommodate resignations of directors by allowing the Board to fill a vacancy by majority vote. Normally, the vacancy may be filled immediately for the unexpired remaining term of the director resigning. There are three exceptions:

- The Bylaws provide that a vacancy in the office of *President-Elect*, if the incumbent resigns, is effectively not filled. Instead, at the next annual meeting the Board elects a President to serve immediately in place of the resigned President-Elect.

- If a **President** resigns, the **President-Elect** immediately succeeds to the office of President. Depending on how long a President-Elect was in office through this succession process, he or she may or may not serve a full year term as President. The President-Elect may also be called upon to perform the duties of President if the sitting President is absent, unable, or unwilling.
- There appears to be no provision to replace **Immediate Past President Directors** if they resign. Clearly, they will be replaced through normal succession through the presidential officer director positions.

Since an officer position is inexorably linked to a special class of director, it is reasonable to believe that an individual cannot resign only an officer position. Any resignation is, of necessity, a resignation as an Officer Director. To believe otherwise would imply or lead to the illogical conclusion that the Board in replacing one or more resigned officers (who tried to remain on the Board as a director) would need to expand the number of directors in excess of the 29 allowed by the Bylaws. This, clearly, could not be done without amending the Bylaws through a member vote.

### **REMOVAL OF DIRECTORS (OFFICERS)**

The Academy Bylaws make no provisions for removal of directors (or for officers).

In fact, the Academy Bylaws very clearly avoid the notion of removing an officer or an Officer Director. In Article VI [Duties of Officers], the Bylaws very clearly address the situation in which a President is unable or refuses to act not by removal from office (perhaps, the most logical alternative) but by delegating the Presidential duties to the President-Elect. Therefore, the Bylaws seem to set forth, not merely by absence but also by example, that the Academy has not reserved a right to remove directors from the Board. Rather, the Bylaws establish for the Board has relatively broad powers to assign duties to the directors.

Officers are a special class of director. The officer title is inexorably linked to the director position by Academy Bylaws and the Act. Therefore it is reasonable to believe that Officer Directors may be removed only through the process that would be applied to the removal of a director.

#### ***Legal Requirements***

In the absence of any specific language in the Academy Bylaws the provisions of the Act may be looked to:

***Sec. 108.35. Removal of directors.*** *(a) One or more of the directors may be removed, with or without cause. In the case of a corporation having a board of directors which is classified in accordance with subsection 108.10(e) of this Act, no director may be removed except for cause if the articles of incorporation or the bylaws so provide.*

It is reasonable to interpret this language as follows:

- The first sentence of this provision indicates that, in general, a Not for Profit Corporation may remove directors with or without cause.
- The second sentence is an exception to the general rule which is applied to organizations like the Academy with multiple classes of directors. In this case directors may only be removed for cause and then only if the organization's bylaws so provide.

As noted, there are no provisions at all in the Academy Bylaws pertaining to removal of directors. Therefore the Academy has not in its Bylaws reserved the right to remove a director for cause. Therefore, it would seem that unless the Academy amends its Bylaws to allow this, it cannot do it.

If the Academy Bylaws did have a provision allowing the removal of a Director for cause, then, per the Act, the process must proceed as follows (although it is acknowledged that some interpretation is required since the Act was drafted to apply to a wide variety of not for profit organizations):

The Act states:

*108.35 (c) In the case of a corporation with members entitled to vote for directors, no director may be removed, except as follows:*

*(1) A director may be removed by the affirmative vote of two-thirds of the votes present and voted, either in person or by proxy.*

*(2) No director shall be removed at a meeting of members entitled to vote unless the written notice of such meeting is delivered to all members entitled to vote on removal of directors. Such notice shall state that a purpose of the meeting is to vote upon the removal of one or more directors named in the notice. Only the named director or directors may be removed at such meeting.*

Some of the Academy directors are elected by the members. Therefore, the Academy would fall into the 108.35 (c) category which would require a 2/3rds affirmative vote at a meeting for which adequate prior notice was given. Such notice must indicate the purpose of the meeting is to remove one or more directors and only those named directors can be removed at that meeting.

In the above, "members" may be taken to mean members of the organization, that is, MAAA's in the Academy's case. So, it could be argued that in an organization like the Academy with directors elected by the members (even though not all are), a director no matter how elected may only be removed by a 2/3rds vote of all MAAA's present and voting. Indeed, there may be valid and logical reasons for this restriction on removal in organizations with many classes of directors.

Since the Academy has directors both elected by members and by the Board, it might be claimed that 108.35(b) ought to apply. See below:

*108.35 (b) In the case of a corporation with no members or with no members entitled to vote on directors, a director may be removed by the affirmative vote of a majority of the directors then in office present and voting at a meeting of the board of directors at which a quorum is present.*

However, a more reasonable argument is that the Act very clearly and unambiguously divides Not For Profit Corporations into two categories:

- 108.35 (b) organizations “with no members entitled to vote on directors” and,
- 108.35 (c) organizations “with members entitled to vote for directors.”

It cannot logically be argued that the Academy belongs in any category but the latter. In effect, the latter is a catch all category. That is, the paragraph (b) category is not defined as a class with “members not entitled to vote on directors” which might be construed as also identifying the Academy which does have classes of directors on which members are not entitled to vote. Rather, the paragraph (b) category is defined as a class of organizations with “no members entitled to vote on directors” which does not define the Academy voting structure since members are entitled to vote on a class of directors.