

PASSED: HOUSE BILL 350

HOA MEETINGS AND
VOTING GUIDELINES

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While the Utah HOA industry tends to put more focus on the Utah Condominium Ownership Act and the Utah Community Association Act, it is important to remember that most Utah HOAs are registered as nonprofit corporations because of the benefits incorporation affords. HOAs registered as nonprofit corporations are subject to the Utah Revised Nonprofit Corporation Act located at U.C.A. §16-6a ("Nonprofit Act"). This is especially important to note for condominium associations because the Utah Condominium Ownership Act gives the Nonprofit Act priority over a condominium association's own governing documents when a conflict exists between them. See U.C.A. §57-8-40. Fortunately, most of the Nonprofit Act is written to apply only by default; in other words, applying only when the HOA's governing documents are silent on a given issue.

House Bill 350 ("HB 350") amends Section 808 of the Nonprofit Act. Section 808 deals with the removal of the corporation's board of directors (a.k.a "management committee" or "board of trustees"). Nearly all HOA bylaws or declarations contain a provision laying out the procedures and requirements necessary for members to call a meeting and hold a vote to remove one or more of the current HOA directors. The most typical removal voting requirements are either 67% or a majority of the HOAs voting interests. After reviewing Section 808, the Utah Legislative Action Committee saw two concerns.

First, Section 808 did not clearly give deference to the bylaws and declarations of an HOA. In other words, even if an HOA's declaration or bylaws clearly indicated the vote necessary to remove a director from the board, an argument could have been raised that such provision was trumped by Section 808.

Second, Section 808 stated that a director could be removed "only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors." This language made little sense in application to the typical HOA voting structure. Most HOA boards are elected under a plurality voting system. Under a plurality voting system, a director could win an election by receiving only 5% of the votes or she could win the election by receiving 90% of the votes - all that matters is that the director receives one more vote than the other candidates. Thus, it is difficult, if not impossible, to determine the number of votes necessary to remove a director elected by plurality as was required under Section 808.

HB 350, which unanimously passed both the House and the Senate during the 2014 Utah Legislative session, redressed these issues and clarified the uncertainties. First, HB 350 gives clear deference to the HOA's bylaws and declarations. In other words, Section 808 now only applies when an HOA's governing documents are silent on the board removal process and vote. Second, HB 350 struck the language regarding the removal of directors by an amount sufficient to elect them. Instead, Section 808 now allows for the removal of a director(s) by a simple majority of the HOA's voting interests.

While the changes to HB 350 may seem small, they may very well save an HOA thousands of dollars in litigation expenses.