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Doron F. Eghbali Corporate Law

[How to Elect and Remove Corporate Directors in CA](#)

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Upon formation of a corporation, directors are named in the Articles of Incorporation or are appointed by the incorporator. Thereafter, directors are elected annually. Directors could be removed, generally, if outstanding shareholders approve the removal. Nonetheless, despite the latter concise general rules, election and removal of corporate directors are often fraught with complexities. In this Article, we explore and peruse to some extent some of the intricacies associated with electing and removing California corporate directors.

ELECTION OF DIRECTORS AFTER FORMATION OF CALIFORNIA CORPORATION

Directors elected at an annual meeting hold office until the next annual meeting and until a successor is elected and qualified. Articles of Incorporation could also provide for a shorter term of one year to allow for a voting shift. Corporations Code Section 194.7 defines voting shift as "a change pursuant to or by operation of a provision of the articles, in the relative rights of the holders of one or more classes or series of shares, voting as one or more separate classes or series, to elect one or more directors."

In addition to electing directors at annual meetings, in certain circumstances directors may be elected at special meetings. Directors may be elected to fill in vacancies on the board. CA Corporations Code Section 305(a). Directors could also be elected by unanimous written of all shares entitled to vote for the election of directors. CA Corporations Code Section 603(d).

Interestingly, election of directors need not be by ballots, unless the bylaws provides others or a shareholder demands voting by ballot and before the election commences. CA Corporations Code Section 708(e).



1. CUMULATIVE VOTING

Every shareholder entitled to vote in election of directors, may cumulate votes by multiplying the number of directors to be elected by the number of shares such shareholder is entitled to vote. Then the shareholder may give the cumulative votes to one candidate or distribute the votes to as many candidates shareholder desires.

To be eligible for cumulative voting (CA Corporations Code Section 708(b)):

- The candidate's or the candidates' names have been placed in nomination before voting;
- The shareholder has given notice, at the meeting before voting, of the cumulative voting. When Shareholder gives such notice, then other shareholders may cumulate their votes, too.

2. VALIDATION OF ELECTION

CA Corporations Code Section 709(a) provides a summary judgment to ascertain the validity of any election of director or officer of a corporation. Any shareholder, whether or not eligible to vote at the election, could challenge the election in court.

CA Corporations Code Section 709(b):The Court, upon filing the complaint to challenge validity of election, shall set a hearing date within 5 days, unless a good cause shows a later date should be set.

CA Corporations Code Section 709(c):The Court may do the following in the action filed:

- Determine the person entitled to be the director;
- Order a new election to be held;
- Order a new appointment to be made;
- Determine the validity, effectiveness and construction of voting agreements;
- Determine the validity of the issuance of shares;
- Determine the right of persons to vote; and
- Any other relief the Court deems to be just and proper.

3. APPOINTMENT OF OFFICERS

CA Corporations Code Section 312(a) provides that a corporation is required to have:

1. A Chairperson of the Board, a President or both;
2. A Secretary;
3. A Chief Financial Officer; and
4. Other officers as stated in the Bylaws or determined by the Board as may be necessary to sign corporate instruments.

CA Corporations Code Section 312(a): Unless the Bylaws provide otherwise, the President, or if none, the Chair of the Board is the General Manager or Chief Executive Office of the Corporation. Any number of offices may be held by more than one person, unless the Bylaws or Articles of Incorporation state otherwise.



REMOVAL OF DIRECTORS

Other than removing directors without cause through approval of outstanding shares, there are other methods for removal of directors.

1. CA Corporations Code Section 304: Superior Court of a proper county, upon lawsuit of Shareholders of a corporation who have at least 10 percent of the outstanding shares, may remove a director in case of fraudulent or dishonest acts and gross abuse of authority.
2. CA Corporations Code Section 302: The Board may remove a director who has been convicted of felony or decreed unsound mind by order of court.

SALIENT NOTE

This article NEITHER supplants NOR supplements the breadth or depth of such esoteric topic. In fact, this article ONLY provides a rudimentary analysis of such rarefied subject matter. If you have any questions, you should contact [Doron Eghbali](#).

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