

Board Member Eligibility: Can you prevent some people from serving on the Board?

An Association may set qualifications it deems appropriate for a person to serve on its Board.^{1 2 3} Those qualifications must be in the Association's Governing Documents and comply with federal discrimination laws to be valid.⁴

Under federal law, an Association cannot prevent a person from serving on its Board on the basis of race, national origin, ethnic background, age, sexual orientation, religious beliefs, sex, or disability.⁵ An Association can prevent a person in one of the above protected classes from serving on its Board if the Association's basis for preventing service on the Board is not the person's status as a member of one of the above protected classes, but rather because the person does not meet the Association's other, permissible qualifications.⁶

Some examples of qualifications that an Association might require for a person to serve on its Board include:

- (1) Board members must attend meetings;
- (2) There can be only one Board member from each building;
- (3) Board members cannot have a criminal history (typically felony convictions);
- (4) Board members cannot be delinquent on their assessments;
- (5) Board members cannot be owners in frequent violation of the Association's governing documents;
- (6) Board members cannot be people who an insurance company will not bond; or
- (7) Board members cannot be out-of-state owners.

So how does this relate to owners who are not natural persons (if the documents require that board members must be owners)? Under the Condo Act, a condo Association cannot prevent a person who is a partner, director, or officer in an entity that owns a unit from serving on its Board unless the condo Association's Declaration or bylaws provide otherwise.⁷ Although the HOA Act is silent on the issue, an HOA probably cannot prevent a person who is a partner, director, or officer in an entity that owns a home from serving on its Board unless the HOA's Declaration or bylaws provide otherwise.⁸

¹ RCW 64.34.324(1) (Bylaws) provides:

Unless provided for in the declaration, the bylaws of the Association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the Board of directors and officers and filling vacancies;

² RCW 64.38.030 (Association bylaws) provides:

Unless provided for in the Governing Documents, the bylaws of the Association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the Board of directors and officers and filling vacancies;

³ The Old Act is silent on Board member eligibility and qualifications.

⁴ Boards are prohibited from determining qualifications, powers, duties, or terms of office for the Board without unit owner approval. See RCW 64.34.308(2); RCW 64.38.025(2); RCW 64.32.250.

⁵ See 42 U.S.C. Chapter 21 Civil Rights.

⁶ 42 U.S.C. 21 only requires entities to not discriminate on the basis of the person's protected class status. Entities are free to deny persons in a protected class for a different reason, so long as the stated reason is valid and not pretext to justify denial on the basis of the person's protected class status. See, *Hollingsworth v. Wash. Mut. Sav. Bank*, 37 Wn. App. 386 (Wash. Ct. App. 1984) (An employee argued the employer's stated justification for the employee's discharge was merely a pretext for the employer's discriminatory reason. The court held determination of which version was more credible was a question of fact for the jury.).

⁷ RCW 64.34.324(3) (Bylaws) provides:

In determining the qualifications of any officer or director of the Association, the term "unit owner" . . . shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the Association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person.

⁸ See RCW 64.38.030 (Association bylaws). The HOA Act is silent on whether partners, directors, or officers in entities that own a home are considered homeowners for purposes of determining Board qualifications.