

## **IC 23-17-12**

### **Chapter 12. Directors**

#### **IC 23-17-12-1**

##### **Necessity of having board of directors; exercise of corporate powers; management of corporate business; delegation of powers**

Sec. 1. (a) A corporation must have a board of directors.

(b) Except as otherwise provided in this article:

(1) corporate powers shall be exercised by or under the authority of; and

(2) the business and affairs of the corporation managed under the direction of;

the corporation's board of directors.

(c) Articles of incorporation may authorize a person or a group of persons or the manner of designating a person or a group of persons to exercise some or all of the powers that would otherwise be exercised by a board of directors. To the extent authorized:

(1) the person or group of persons has the duties and responsibilities of the directors;

(2) the directors are relieved to that extent from the duties and responsibilities; and

(3) the person or group of persons should be considered a director or directors for purposes of IC 23-17-13 and IC 23-17-16.

*As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.8.*

#### **IC 23-17-12-2**

##### **Qualifications**

Sec. 2. (a) A director must be an individual.

(b) Articles of incorporation or bylaws may prescribe qualifications for directors.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-12-3**

##### **Number of directors; increase or decrease in number**

Sec. 3. (a) A board of directors must consist of at least three (3) individuals, with the number specified in or fixed in accordance with articles of incorporation or bylaws.

(b) The number of directors may be increased or decreased, but to not less than three (3), by an amendment to or in a manner prescribed in articles of incorporation or bylaws.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-12-4**

##### **Time and method of election**

Sec. 4. (a) If a corporation has members, all the directors except the initial directors shall be elected at the first annual meeting of members and at each annual meeting after the first annual meeting,

unless articles of incorporation or bylaws provide:

- (1) another time or method of election; or
- (2) that some of the directors are designated or appointed by another person.

(b) If a corporation does not have members, all the directors except the initial directors shall be elected, designated, or appointed as provided in articles of incorporation or bylaws. If a method of election, designation, or appointment is not set forth in articles of incorporation or bylaws, the directors other than the initial directors shall be elected by the board of directors.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-12-5**

##### **Term**

Sec. 5. (a) Articles of incorporation or bylaws must specify the terms of directors. Except for designated or appointed directors, the term of a director may not exceed five (5) years. In the absence of a term specified in articles of incorporation or bylaws, the term of a director is one (1) year. Directors may be elected for successive terms.

(b) Subject to sections 8 through 11 of this chapter, a decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in articles of incorporation or bylaws:

- (1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and
- (2) the term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until:

- (1) a successor is elected, designated, or appointed and qualifies; or
- (2) there is a decrease in the number of directors.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-12-6**

##### **Staggered terms**

Sec. 6. Articles of incorporation or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of groups is not required to be uniform.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-12-7**

##### **Resignation**

Sec. 7. (a) A director may resign at any time by delivering written notice to one (1) of the following:

- (1) The board of directors.
- (2) The presiding officer of the board of directors.
- (3) The president or secretary of the corporation.

(b) A resignation is effective when the notice is effective under IC 23-17-28 unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

*As added by P.L.179-1991, SEC.1.*

### **IC 23-17-12-8**

#### **Removal of director by vote of members**

Sec. 8. (a) Members may remove a director elected by the members with or without cause unless articles of incorporation provide otherwise.

(b) Except when otherwise provided in the articles of incorporation, if a director is elected by:

- (1) a class, chapter, or other organizational unit; or
- (2) region or other geographic grouping;

the director may be removed only by the members of the class, chapter, unit, or grouping entitled to vote.

(c) Except as provided in section 10 of this chapter, a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if:

- (1) the number of votes; or
- (2) the director was elected by a class, chapter, unit, or grouping of members, the number of votes of the class, chapter, unit, or grouping;

sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose of the meeting is the removal of the director.

(f) In determining if a director is protected from removal under subsection (b), (c), or (d), it is assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of the director's election.

(g) An entire board of directors may be removed under subsections (a) through (e).

*As added by P.L.179-1991, SEC.1. Amended by P.L.96-1993, SEC.9.*

### **IC 23-17-12-9**

**Removal of director by vote of directors**

Sec. 9. A director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office, unless a greater number is set forth in articles of incorporation or bylaws.

However, a director elected by the board of directors to fill the vacancy of a director elected by the members may be removed without cause by the members but not by the board of directors.

*As added by P.L.179-1991, SEC.1. Amended by P.L.1-1992, SEC.118.*

**IC 23-17-12-10**

**Removal of director by vote of directors; reasons set forth in articles of incorporation or in bylaws**

Sec. 10. If at the beginning of a director's term on the board of directors articles of incorporation or bylaws provide that the director may be removed for reasons set forth in the articles of incorporation or bylaws, the board of directors may remove the director for the reasons. The director may be removed only if a majority of the directors then in office votes for the removal.

*As added by P.L.179-1991, SEC.1.*

**IC 23-17-12-11**

**Religious corporations; removal of directors**

Sec. 11. The articles of incorporation or bylaws of a religious corporation may do the following:

- (1) Limit the application of this section.
- (2) Set forth the vote and procedures by which the board of directors or a person may remove with or without cause a director elected by the members or the board of directors.

*As added by P.L.179-1991, SEC.1.*

**IC 23-17-12-12**

**Removal of designated or appointed directors**

Sec. 12. (a) A designated director may be removed by an amendment to articles of incorporation or bylaws deleting or changing the designation.

(b) Except as provided in articles of incorporation or bylaws, an appointed director may be removed with or without cause by the person appointing the director. The person removing the director must do so by giving written notice of the removal to the following:

- (1) The director.
- (2) The presiding officer of the board of directors or the corporation's president or secretary.

A removal is effective when the notice is effective under this article unless the notice specifies a future effective date.

*As added by P.L.179-1991, SEC.1.*

### **IC 23-17-12-13**

#### **Removal by court order**

Sec. 13. (a) The circuit court or superior court of the county where a corporation's principal office is located may remove a director of the corporation from office in a proceeding commenced by the corporation or at least ten percent (10%) of the members of a class entitled to vote for directors, if the following conditions exist:

(1) The court finds that:

(A) the director engaged in:

(i) fraudulent or dishonest conduct; or

(ii) gross abuse of authority or discretion;

with respect to the corporation; or

(B) a final judgment has been entered finding that the director has violated a duty under IC 23-17-13.

(2) Removal is in the best interests of the corporation.

(b) The court that removes a director may bar the director from serving on the board of directors for a period prescribed by the court.

(c) If members commence a proceeding under subsection (a), the corporation shall be made a party defendant.

(d) The articles of incorporation or bylaws of a religious corporation may limit or prohibit the application of this section.

*As added by P.L.179-1991, SEC.1.*

### **IC 23-17-12-14**

#### **Filling vacancies**

Sec. 14. (a) Unless the articles of incorporation or bylaws provide otherwise and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, one (1) of the following may occur:

(1) The members entitled to vote for directors, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, other organizational unit, or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members.

(2) The board of directors may fill the vacancy.

(3) If the directors remaining in office constitute fewer than a quorum of the board of directors, the remaining directors may fill the vacancy by the affirmative vote of a majority of the directors remaining in office.

(b) Unless articles of incorporation or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy must be filled as provided in articles of incorporation or bylaws. In the absence of an applicable article of incorporation or bylaw, the vacancy may not be filled by the board of directors.

(d) A vacancy that will occur at a specific later date because of a resignation effective at a later date under section 7(b) of this chapter or otherwise may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

*As added by P.L.179-1991, SEC.1.*

#### **IC 23-17-12-15**

##### **Compensation**

Sec. 15. Unless articles of incorporation or bylaws provide otherwise, a board of directors may fix the compensation of directors.

*As added by P.L.179-1991, SEC.1.*