



It can be an awkward and sensitive matter, but how do boards deal with an ineffective director? Because a poorly performing director can lead to a dysfunctional board culture, a less successful company and less value for stakeholders, the independent board chair or lead director must take action in a timely manner.

## What are the best and worst practices for removing an “unfit” director?

1. Signs of a disruptive director include one who is: always “in the weeds;” not prepared for the meeting; continuously checking email during meetings; speaking in a bullying tone; leaving an hour early from every meeting because he has a plane to catch; or, has been on the board for 20 years and is steadily losing interest. Do any of your directors express these characteristics?
2. When is the last time the board reviewed its job description for directors or its governance guidelines?
3. Boards work as one, which is the reason “board fit” is an important consideration in the nominating, and the re-nominating, process. Prior to the annual meeting each year, does the board chair assess director contributions? Do directors complete self or peer evaluations?
4. It is important at meetings for directors to constructively disagree – for the purpose of finding the right answer. If the discussion is not useful, is the board chair comfortable having an honest discussion with the problematic director? Has it ever been done? Is another conversation necessary?
5. The worst practice in dealing with a disruptive director is to do nothing. Is your board guilty?
6. Consider which of these steps might work if your board has an ineffective member:
  - Communication is always key. Have a direct, yet friendly, discussion with the director – he may not know that his actions (or inactions) are disruptive.
  - Institute a policy whereby any director that accepts a new position, including retirement from the position he held at election, must tender a resignation – which the board may accept, or not. When it is not harmful to the company, and an immediate departure is not necessary, this is a useful way to avoid a potential messy situation.
  - At the board’s annual meeting, make it an agenda item to review directors’ fiduciary responsibilities (duties of care, loyalty) or job description – in the spirit of learning “what the board can do to increase its effectiveness – so it can get even better.” Sometimes, a gentle nudge is all it takes to redirect a difficult board member.
  - If the director is new, or is having a difficult time getting up-to-speed, but has great potential, consider engaging a board mentor for him, for a six-month period.
  - If a disruptive or unproductive director does not change his behavior, the board must not nominate the director to stand for re-election.
  - Although rare, in certain cases, the board may need to consider immediate removal. This comes down to a frank discussion between the board chair and the director.
  - Remember that the departure of a director may trigger an 8-K filing and the company should be prepared for potential questions.
  - In order to avoid future issues, make it a habit to frequently compare director skill sets with company needs. Set a culture whereby directors should expect that they may be replaced as the company evolves.

*BQs are published monthly. Discuss your answers in the executive session at your next board meeting. It could help your board become more effective.*

