



How do I remove a Board Member from my NPO

Understanding Your NPO Constitution & Common Law

If the NPO is established as a **Voluntary Association** (not a company), the process is dictated entirely by its **Constitution**.

- Check the "Termination of Membership" or "Removal of Office Bearers" clauses.
- Common grounds include "bringing the organization into disrepute" or "failure to attend three consecutive meetings."
- Even if the Constitution is silent on the specific steps, **Common Law** requires that "Natural Justice" (the right to be heard) must be applied.

Beyond Voluntary Associations: If the NPO is a Non-Profit Company (NPC), you must also follow the Companies Act and submit a COR39 form to the CIPC. If it is a Non-Profit Trust, you must notify the Master of the High Court to amend the Letters of Authority. Updating the DSD alone is not legally sufficient for these entities.

The 3 Scenarios for Removing a Board Member

The standard procedural steps for each scenario based on South African best practices and common law are.

1. Resignation

Resignation is a unilateral act; the board does not "approve" it, but they must formally **accept and record** it.

- **Written Notice:** The member should submit a formal letter of resignation to the Chairperson or Secretary.
- **Effective Date:** The resignation is effective from the date stated in the letter or, if no date is mentioned, the date it is received.
- **Board Resolution:** At the next board meeting, a formal resolution should be passed to:
 - Accept the resignation.
 - Update the **Register of Office Bearers**.
 - **DSD Notification:** Within **30 days**, the NPO must notify the **Department of Social Development (DSD)** of the change in office bearers by submitting a Form NPO 2 (or via the online portal).



2. Deceased Board Member

This is a matter of administrative cleanup rather than a legal process of removal.

- **Formal Recording:** The board should record the death in the minutes of the first meeting following the event.
- **Verification:** While a death certificate is not always required for the DSD, the board should ensure they have a record of the date of passing for the organization's history.
- **Filling the Vacancy:** Check the Constitution for "Casual Vacancies." Usually, the board has the power to **co-opt** a replacement to serve until the next Annual General Meeting (AGM).
- **DSD Update:** Like a resignation, notify the NPO Directorate at DSD within 30 days.

3. Disciplinary Removal

This is the most "high-risk" area. If the Constitution's disciplinary clause is vague, you must follow the principles of **Natural Justice** (the right to be heard) to avoid a High Court challenge.

Step-by-Step Disciplinary Process:

1. **Suspension vs. Permanent Removal:** Many Constitutions only empower the Board to suspend a member pending an inquiry. Absolute removal often requires a majority vote by the broader membership at an Annual General Meeting (AGM) or Special General Meeting (SGM).
2. **Investigation:** The board (or a sub-committee) must gather evidence of the alleged misconduct (e.g., financial mismanagement, breach of the Code of Conduct, or bringing the NPO into disrepute).
3. **Recusal of Conflicted Members:** Note that during the final board vote on the disciplinary removal, any board members directly involved in the dispute must formally recuse themselves to protect the integrity of the vote
4. **Notice of Inquiry:** Issue a formal written notice to the board member. This must include:
 - The specific **charges** against them.
 - The **date, time, and venue** of a disciplinary hearing.
 - Their **right to be represented** and their right to call witnesses.
4. **The Hearing:** A neutral chairperson (often an independent person if the board is conflicted) hears the evidence. The members must be allowed to state their case.
 - **Recommendation:** The chairperson or committee recommends a sanction (e.g., suspension or removal).



- **Board Vote:** The board meets to vote on the recommendation. Ensure the quorum requirements in your Constitution are met.
 - **Final Notification:** Send a formal letter to the member confirming the removal and the reasons for it.
5. **The Right to Appeal:** Natural justice standardly implies an appeals process. Briefly outline how a removed member can appeal the disciplinary committee's decision to an independent arbitrator or at a general meeting.
- **Notice of Appeal Rights:** When delivering the initial removal letter, explicitly inform the member of their right to appeal, the deadline to lodge it (typically 7 to 14 days), and the designated recipient.
 - **Formal Submission:** The removed member must submit a written appeal detailing their specific grounds—such as procedural irregularities, perceived bias from the initial chairperson, or new, relevant evidence.
 - **Convening the Appeal Body:** To ensure impartiality, the appeal should be heard by a neutral party who was not involved in the original investigation or hearing. This can be:
 - *An Independent Arbitrator/Panel:* An external legal practitioner, sector expert, or neutral sub-committee.
 - *The General Membership:* Referring the matter to the broader voting membership at a Special General Meeting (SGM), if required by your Constitution.
 - **Hearing and Review:** The appeal panel reviews the original hearing records, evidence, and written submissions. They determine whether the original process was fair and if the sanction was proportional.
 - **Final Binding Ruling:** The appeal body issues a written decision to either uphold, overturn, or modify (e.g., change removal to a temporary suspension) the board's decision. If the removal is upheld, the process is concluded internally; if overturned, the member is reinstated.
6. **Post Hearing**
- **Updating Bank Mandates:** Immediately remove the departed board member from all bank accounts, signing mandates, and financial platforms to prevent severe financial risk.
 - **Asset and Access Recovery:** Revoke all digital access (organization emails, social media accounts, software) and recover physical assets (keys, laptops, documents) on the effective date of termination.



NPO BOM Disciplinary Forms

1. Formal Notice of Disciplinary Hearing

Date Issued: [Insert Date—must be at least 7-14 days before the hearing] **To:** [Name of Board Member] **From:** [Name of Sender/NPO Secretary] **Subject:** Notice to Attend Disciplinary Hearing

Hearing Date and Time: [Insert Date] at [Insert Time] **Location:** [Physical Address or Virtual Meeting Link]

The Allegations: You are required to attend a formal hearing regarding the following allegations: [Clearly and simply detail the offense, e.g., "Failure to declare a conflict of interest on May 12th regarding the stationary supplier"].

Your Rights: To ensure a fair process, you have the right to state your case, call witnesses, and be accompanied by a fellow NPO member for support. External legal representation is generally not permitted. Please confirm your attendance by [Date].

2. Record of Disciplinary Hearing

Date of Hearing: [Insert Date] **Neutral Chairperson:** [Insert Name of Independent Chair] **Attendees Present:** [List the accused, their representative, and any witnesses]

Summary of Evidence Presented: [Objectively list the documents, financial records, or witness statements provided to support the allegations]

Summary of Member's Defense: [Record the factual response, explanations, and any mitigating factors presented by the accused member]

Chairperson's Findings: [State the conclusion for each allegation, e.g., "Charge 1 is found proven on a balance of probabilities because the emails demonstrate a clear breach of confidentiality."]

3. Notice of Disciplinary Outcome

Date Issued: [Insert Date] **To:** [Name of Board Member]

The Decision: Following the disciplinary hearing held on [Date], the Board has reviewed the independent Chairperson's findings. The Board has formally resolved to [State Sanction, e.g., permanently remove you as a Board Member], effective immediately.



Mandatory Handover: Your access to all NPO bank accounts, email addresses, and software platforms has been revoked. You are required to return all physical assets (keys, laptops, organization documents) to the office by [Insert Date].

Appeal Process: You have the right to appeal this decision. Should you wish to do so, please complete and submit the attached Appeal Form by [Insert Deadline Date].

4. Disciplinary Appeal Form

Appellant Name: [Insert Name] **Date of Submission:** [Insert Date]

Grounds for Appeal: (Please select your primary reason) [☐] Procedural Irregularity (The hearing process was unfair or biased) [☐] Disproportionate Sanction (The punishment is too harsh for the specific offense) [☐] New Evidence (Crucial facts have emerged that were unavailable during the hearing)

Supporting Details: [Please provide a brief, factual explanation of your chosen grounds. Attach any new documentary evidence for the appeal panel to review.]

Signature: _____

Would you like me to draft a quick checklist for the administrative steps you must take (like notifying the DSD and updating your bank) once the removal is finalized?