

Nominating Committee vs. Board - Independent or Dependent

Considering the relationship between CCRC Boards and their Nominating Committees (NC) reveals two opposite models from which to choose. One populates the entire NC with Board members making the NC a Board captive. When a Board seeks to preserve its culture with minimal dissidents or activist behavior, this model works well. Some boards in corporate America follow this model. When a Board intentionally seeks to be open to fresh ideas from members with diverse backgrounds, maintaining NC independence is the better choice. While it might be thought harmless to allow one or more Board members to sit on an otherwise independent NC, such a choice is accompanied by multiple risks and is not likely to be favored. This note makes the case for maintaining complete NC independence as the choice for best practice.

Multiple Forms of Conflict of Interest When a Board Member Serves on a Nominating Committee

There are at least six forms of conflict of interest arising from having even one Board member serving on a Nominating Committee. Here are those forms in brief.

1. Structural Conflicts

These arise because the Board member is part of the body whose composition the Committee is shaping.

- **Self-perpetuation risk** — The Board member has a direct interest in who joins the Board, because new members affect future votes, alliances, and leadership decisions.
- **Influence over successors** — The Board member may favor candidates who align with their own views or with the current Board majority.
- **Protection of incumbents** — The Board member may resist candidates who might challenge current Board practices or leadership.

Even if the Board member tries to be objective, the structure itself creates unavoidable bias.

2. Positional or Power-Based Conflicts

These arise from the authority the Board member holds.

- **Implicit pressure on other Committee members** — Even without speaking, a Board member's presence can shape discussion because others may defer to their perceived authority.
- **Agenda-setting influence** — A Board member may steer which candidates are discussed, how concerns are framed, or which criteria are emphasized.
- **Unequal access to information** — A Board member may bring Board perspectives into the room, intentionally or not, shifting the Committee's independent judgment.

This is especially acute if the Board member is the Chair, Vice Chair, or a long-serving member.

3. Loyalty and Role-Conflict Issues

These arise because the Board member has dual obligations.

- **Duty to the Board vs. duty to the Committee** — The Board member may feel torn between confidentiality and the expectation to "keep the Board informed."

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- **Perceived obligation to represent Board interests** — Even if not instructed, the Board member may feel responsible for ensuring the Committee’s choices align with Board preferences.
- **Fear of contradicting Board colleagues** — A Board member may hesitate to support a candidate who is known to be unpopular with the Board.

This dual loyalty undermines the Committee’s independence.

4. Confidentiality Conflicts

These arise because the Board member sits inside a confidential process while belonging to a body that expects transparency from its members.

- **Risk of selective disclosure** — The Board member may share Committee discussions informally with other Board members.
- **Unequal information flow** — Some Board members may gain inside knowledge while others do not, creating internal Board inequities.
- **Chilling effect on Committee deliberations** — Other Committee members may withhold candid views, fearing they will be relayed back to the Board.

Confidentiality becomes compromised simply by the Board member’s presence.

5. Perception-Based Conflicts

These arise even if the Board member behaves perfectly.

- **Appearance of undue influence** — Residents may believe the Board is controlling the nomination process.
- **Erosion of trust** — Candidates may feel the process is biased toward the current Board majority.
- **Reduced willingness to serve** — Qualified residents may decline to be considered if they believe the process is politicized.

In governance, perception is often as important as reality.

6. Future-Benefit Conflicts

These arise because the Board member may benefit from the Committee’s decisions.

- **Potential for future leadership roles** — A Board member may support candidates who will later support them for Chair or other positions.
- **Influence over Board culture** — The Board member may prefer candidates who reinforce existing norms rather than bring new perspectives.
- **Protection of personal projects or priorities** — A Board member may favor candidates who will support ongoing initiatives they champion.

These are subtle but powerful incentives.

Summary

This note makes a strong case that **any Board presence on the Nominating Committee introduces multiple unavoidable conflicts of interest** — structural, positional, loyalty-based, confidentiality-related, perceptual, and future-benefit. Therefore, **complete independence** of the NC is the **best governance practice** for fairness, trust, and organizational health.
