

State of Nevada

Common-Interest Communities and Condominium Hotels Program

Department of Business & Industry Real Estate Division



HOA Boards and Ethics

Disclaimer

This is a general education class based on NRS 116 and related laws and regulations. It is not intended to provide a legal opinion or legal advice. If you feel there has been a violation of your governing documents or NRS116 statute you can file a complaint with the Ombudsman's office



Learning Objectives

Upon completion of this class, participants will have a basic understanding of...

What is ethics, ethical principles

Fiduciary Duties

Board Ethical Responsibilities

Testing Ethical Beliefs

Code of Conduct: Definition, Creation,
Commitment





Ethics

Ethics are the moral compass that guides the performance of a board members' duties and governance of a unit owners association.

Creating a functioning compass means establishing a standard for your HOA to follow when conducting its business.

Ethical Principles



- ▶ “Universal” standards of right and wrong
- ▶ A code of conduct
- ▶ Description of acceptable and unacceptable behavior
- ▶ Principles that provide a guide to making decisions



Foundations of Ethical Behavior

- ▶ Integrity
- ▶ Honesty
- ▶ Respect for others
- ▶ Personal responsibility
- ▶ Compassion
- ▶ Dependability



https://www.google.com/search?q=mail.nv.state.us&rls=com.microsoft:en-US:IE-Address&rlz=117WQIB_enUS603&source=Inms&tbm=isch&sa=X&ved=0ahUKEwintPml5cLJAhUEz2MKHVScCkYQ_AUICigE&biw=1680&bih=955#tbn=isch&q=ethics



What's the Difference?

▶ Ethics

- The study of standards of conduct and moral judgment; moral philosophy
- Generally accepted standards of “rightness” or “wrongness” in conduct or action

▶ Law

- The body of legislation, judicial precedents, and acceptable legal principles enforceable through political authority



What's the Difference?



- ▶ Universal ethical actions
 - The action is absolute regardless of the situation

- ▶ Situational ethics
 - The “rightness” or “wrongness” of the action depends on the situation

- ▶ Personal ethics
 - An individual’s beliefs about what is “right” and “wrong”



Justification of not using ethics

- Ethical action may be expensive
- NOT acting is cheaper than taking action
- Being ethical is a sign of weakness
- The public has a short memory
- Maybe we won't get caught, no cry no foul
- I can quit and not be responsible



Accountability

Make the board's actions accountable to each other and the unit owners, creating a transparency that's a win-win for board members and unit owners.

– See more at: <http://www.echo-ca.org/article/ethics-code-hoa-board-members#sthash.fu8in1St.dpuf>

Fiduciary Duty and Board Member Liability

To maintain protection from liability as volunteer directors, HOA board members have to fulfill their fiduciary duty.

This means board members must act in good faith, in the best interests of the association, and using such care, including reasonable inquiry, as an ordinarily prudent person would under similar circumstances.



Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board acts on behalf of the association.

In the performance of their duties, the officers and members of the executive board are fiduciaries and shall act on an informed basis, in good faith and in the honest belief that their actions are in the best interest of the association.

Officers and members of the executive board:

(a) Are required to exercise the ordinary and reasonable care of officers and directors of a nonprofit corporation, subject to the business–judgment rule; and

(b) Are subject to conflict of interest rules governing the officers and directors of a nonprofit corporation organized under the law of this State.

NRS 116.3103 Power of executive board to act on behalf of association; members and officers are fiduciaries; duty of care; application of business–judgment rule and conflict of interest rules; limitations on power.

The Business Judgment Rule



The Business Judgment Rule is a presumption that boards' decisions are based on sound business judgment, which can be rebutted only by a factual showing of fraud, bad faith or gross overreaching.

In most cases a board acting in accordance with the Business Judgment Rule is an indication that a board member is likely acting ethically

Fiduciary duty of board

The executive board has a fiduciary duty to ensure that any institution which holds money of the association:

1. Is authorized to do business in the State of Nevada; or
2. Has consented to the jurisdiction of the courts of this State.

NAC 116.395 Executive board: Fiduciary duty with respect to institutions holding money of association. ([NRS 116.3103](#), [116.615](#))

Fiduciary duty of board

1. Acted within the scope of the authority granted in the governing documents;
2. Take no action for reasons of self-interest, gain, prejudice or revenge;
3. Commit an act or omission which amounts to incompetence, negligence or gross negligence;
4. Do not disclose confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates;

Fiduciary duty of board

Comply with all applicable federal, state and local laws and regulations and the governing documents of the association;

(b) Uniformly enforce the governing documents of the association;

(c) Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association;

(d) Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association;

(e) Consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements;

(f) Deposit all funds of the association for investment in government securities that are backed by the full faith and credit of the United States

(g) Maintain current, accurate and properly documented financial records;

(h) Establish policies and procedures for the disclosure of potential conflicts of interest and the appropriate manner by which to resolve such conflicts;

(i) Establish policies and procedures

HOA board members should ask themselves three questions when faced with an ethical dilemma:

1. Is it legal? Study NRS 116 and HOA bylaws to determine if the action will be a violation
2. Is the action biased? Does the action favor one side over another? What are the long term and short effects on all parties?
3. Is it right? Consider your own moral guidelines and if any of them does not seem correct it is probably best to not take the action

The Practice of Ethics

Practicing ethics involves integrity and personal responsibility.

For a HOA board member, this involves knowing, understanding, and doing: knowing the rules of governance for the HOA, understanding the difference between right and wrong behavior or conduct, and always doing what is right.

Ethics of Board Duty and Responsibility

The HOA board should be focused on the main purposes of the association:

Protecting and preserving the HOA's common areas and other real, personal, and intangible assets.

Managing the HOA's finances, which includes statutory budgeting and disclosure requirements, reserve funds, and assessment collections.

Promoting the homeowners' unimpeded and safe use and enjoyment of the HOA's common areas, exclusive use common areas and separate interests.

Enforcing the association's governing documents

- See more at: <http://www.echo-ca.org/article/ethics-code-hoa-board-members#sthash.fu8in1St.dpuf>

A green speech bubble with a tail pointing downwards and to the right. Inside the bubble, the text "Inspire integrity by speaking up." is written in a dark blue, sans-serif font. The word "Inspire" is on the first line, "integrity by" is on the second line, and "speaking up." is on the third line.

Inspire
integrity by
speaking up.

No decision is a decision!

Purposefully choosing to not commit an action for the best interests of the association can be both ethical and beneficial for a homeowners association.

However, sometimes the act of not doing something can breach of a board member's ethical duties.

When inaction negatively affects the well-being of the HOA, board members cannot turn a blind-eye.

Who can be involved

1. Between board members
2. Between board members and unit owners
3. Between board members and Community managers
4. Between board members and vendors
5. Between board members and consultants (lawyers, reserve study specialists)

Boards ethical responsibilities

1. Independently investigate and evaluate facts particular to a situation before acting.
2. Consult with experts or consultants (i.e. legal counsel, financial manager, reserve study provider, etc.) when it is prudent to do so.
3. Rely on information, opinions, reports or statements prepared by experts and consultants.
4. Acting in good faith and in the best interests of the association, directors...
5. Do not make decisions that benefit their own self-interests. Its not about you.
6. Must make decisions that do not negatively affect the association financially, legally or otherwise.
7. Cannot act in the best interests of a particular group or minority interest of an association

Unethical Board Members

- Not enforcing the association's governing documents
- Acting in a disparate or discriminatory manner towards certain unit owners.
- Advancing self-serving interests to further their own agenda (which would be a conflict of interest).
- Improper corporate governance (i.e. not following the requirements of the association's governing documents or statutory requirements).
- Not following the Business Judgment Rule.
- Violating the association's distributing of confidential records.
- Embezzlement – “Borrowing” permanently or temporarily from the association's funds.
- Sharing confidential information

– See more at: <http://www.echo-ca.org/article/ethics-code-hoa-board-members#sthash.fu8in1St.dpuf>

Unethical Unit Owner

- Harassing HOA employees, independent contractors and vendors.
- Damaging to the HOA's common area.
- Continuously & knowingly violating the HOA's governing documents.
- Failing to pay assessments.
- Disrupting meetings
- Spreading false rumors

– See more at: <http://www.echo-ca.org/article/ethics-code-hoa-board-members#sthash.fu8in1St.dpuf>

Unethical Community Managers

Using the association funds for personal use

Working with no contracts

Falsifying documents

Withholding information or records

Signing paper or check that your not authorized to sign

Giving incorrect advise to clients

Sharing privileged information

Charging for work never completed

Test Your Ethical Beliefs

Manner of speaking ?



Quick Check



Ethical Issues In HOA's

- ▶ 1. The community manager has two personal letters that must go out today but she does not have the postage. Since it's less than \$1.00, she adds her letter to the regular HOA mail.
- ▶ 2. The board member wanted to do a favor for one unit owner who had been sick and was in arrears, so the board member informed the unit owner he would temporarily suspend his monthly assessment fees.
- ▶ 3. The board president approves reimbursement for \$100 in office supplies purchased by the community manager even though the community manager is unable to provide receipts.
- ▶ 4. The community manager uses her real estate envelopes when sending out the ballots for an election.

Ethical Issues In HOA's

5. A community manager recommends hiring the same attorney for the association that represents his management company
6. The landscaper finishes his contracted assignment for the association. A board member asks the landscaper to come do some work for them at their house.
7. A community manager intentionally applies a payment for monthly assessments to outstanding fines because the fines are past due.
8. The ARC board approves an exception for the treasurer's backyard pool but later deny a similar request from a homeowner that no one likes.
9. The board member recommends hiring an attorney he believes will render an opinion that is favorable to his position.
10. The account for the HOA notices that the operating budget is short for a few bills, so he decides to transfer funds from the reserve account and plans on moving the money back once the operating budget revenues come in from assessments.

Code of Ethics

Definition

Code of Ethics for HOA's:

A written set of guidelines issued by an association to its board and management and unit owners to help them conduct their actions in accordance with its primary values and ethical standards .

Goal

To aid and guide the volunteer directors, HOA board members when fulfilling their fiduciary duty.

Provide guidelines for board members so that their conduct is above reproach and avoid the appearance of impropriety

Creation

- Does it defines the value system of the HOA and how directors must behave
- Clarifies ethical standards regarding integrity, honesty, confidentiality and competency
- Establishes ethical standards that enable board members to avoid potential grey areas
- Establishes action to determine when a member has “crossed the line” when it comes to grey areas
- Ability to turn an otherwise confusing situation into a clear decision. Leaving little doubt of the proper actions required.

Areas to consider

Good of the community

Lawful actions (following bylaws & NRS116)

Demonstrate Respect (unit owners & board)

Maintain Confidentiality

Promote Harmony and Communication

Pay Assessments on Time

Respect the Rules

Knowledge – informed

Commitment

A good practice is to distribute your board member code of ethics to the unit owners as well as the board. This will make the board's actions accountable to each other and the unit owners

Example Form

BOARD OF Director's HOA (or CONDO ASSOCIATION NAME) COMMITMENT TO GOOD SERVICE

As a volunteer board Member of the _____ [Condo or Unit owners Association], I agree to the following commitments while serving the association:

To place the community's best interests above my own; to sustain an attitude that positively promotes the goals and interests of the Association; and in general, to forego personal interests when making decisions as a board member.

To engage in lawful acts to the best of my ability, understanding that Board members are expected to comply with the governing documents of the Association and the law. This includes doing my best to become more familiar with legalities of the BOD's decisions, and to join with the BOD in seeking resources of information including any professional assistance when needed.

To maintain a high standard of conduct that is above reproach and to avoid any appearance of impropriety.

To accept the BOD's decisions in choosing outside vendors and to take direction from the BOD at all times and respect the processes chosen and the appointed contact point-person to communicate with the outside vendors.

To demonstrate mutual respect for fellow Board Members and Members of the Association at all times, even at times when I disagree with BOD decisions, and to respect the decisions made by a majority of the BOD as I understand there may not be unanimous support for every action taken.

To attend and participate in all meetings and communications to the best of my ability to be present, to come to all meetings prepared to participate, and to become familiar with the agenda and any materials distributed ahead of time to board members beforehand.

To listen, discuss and provide thoughtful input and participate on matters that come before the BOD and the membership.

<http://www.californiacondoguru.com/HOAForms/conduct.html>

Summary

- ▶ Board and community managers should not use their position to enhance their personal wealth
- ▶ Board members and community managers should never borrow any funds from the association
- ▶ Avoid any actions that even may have the appearance of impropriety

Summary

Good of the community

Use Roberts Rules as a guide

Create a code of ethics

Educate unit owners on proper procedures

Educate new board members as to the required expectations of the position

Ask “What would the majority of unit owners do?”

QUESTIONS?



- ▶ Web Site
 - www.red.nv.gov
- ▶ Phone
 - 702.486.4480/877.829.9907/775.687.4280
- ▶ FAX
 - 702.486.4520/775.687.4868
- ▶ E-Mail
 - OMBCLASSES@red.nv.gov
- ▶ Office Locations
 - 2501 East Sahara Ave, Suite 202, Las Vegas, NV 89104

Resource for information on this power point

This power point has been created with the information listed from the following resources:

Ethics Code for HOA Board Members–ECHO serving Community Associations

<http://www.echo-ca.org/article/ethics-code-hoa-board-members>

HOA Director Code of Conduct

Written by [Richard Thompson](#) on Tuesday, 05 March 2013 6:00 pm
http://realtytimes.com/consumeradvice/hoaadvice1/item/430-20130306_hoacodeofconduct

Clip art resources

Ethics clip art:

https://www.google.com/search?q=mail.nv.state.us&rls=com.microsoft:en-US:IE-Address&rlz=117WQIB_enUS603&source=Inms&tbm=isch&sa=X&ved=0ahUKEwintPml5cLJAhUEz2MKHVScCkYQ_AUICigE&biw=1680&bih=955#tbm=isch&q=ethics