



HOA ETHICS

the health and well being of good leadership

SHARING INFORMATION – INCREASING KNOWLEDGE

Community Governance Fundamentals © 2016

Commission on Common Ownership Communities

COMMUNITY ASSOCIATIONS INSTITUTE

Building Strong Communities Through Good Governance

Montgomery County, Maryland

MARCH 19, 2016

DEFINITIONS

- **Ethics** are the moral principles that govern a person's or a group's behavior.
- **Conduct** is the manner in which a person behaves, especially on a particular occasion or in a particular context.

During this session both ethics and conduct may be interchanged within the leadership of an HOA by their members and their Board of Directors

[ETHICS]

- Associations rely on the services of volunteers to sit on the board to make decisions.
- If an association is to survive as a viable economic and social entity, board members must serve **ethically** and in good faith.
- From a legal perspective, this means that each director's decisions must be made with the best interests of the association, which sometimes means placing personal feelings aside.

[ETHICS]

- Board members must be **honest** and **diligent** in all their actions.
- Individuals who handle money or property for others have a **fiduciary** duty. Board members are **fiduciaries** in their relationships to their association, e.g. their Members

[FIDUCIARY DUTY]

Fiduciary duty is an expression that reflects the highest standard of ethical behavior and trust. Board members must be honest in all of their dealings with the association and hold the best interest of the association higher than their own personal benefit.

The fiduciary responsibilities of a corporation's board members include:

- Avoiding conflicts of interest and disclosing any conflicts of interest that might exist.
- Acting in the interests of the company rather than the member's personal interest.

FIDUCIARY DUTY

- Making a genuine effort to be well-informed on the business that comes before the board.
- Providing oversight to assure that all company business is transacted legally.
- Protecting the assets of the corporation.

Board members are also obligated to exercise due care – which means that

the board must take all steps that a reasonable person would take to protect the association.

CONFIDENTIALITY

- As a member of the board, you will probably see and learn personal information about residents. This is particularly true when dealing with covenant violations and past-due assessment payments.
- As a member of the board, you must treat this information confidentially. You may not discuss information learned at the board meeting outside of the meeting, even with other board members.

CONFIDENTIALITY

REAL LIFE EXAMPLE

- During a closed session, Maria learns that her neighbor George is not paying his assessments. She immediately calls George to find out why he is behind on paying.

WHOOOPS!

The information discussed in closed session many NOT be discussed outside the meeting.

MEETING ATTENDANCE

- Membership on the board carries the commitment to serve and to attend board meetings. If you do not regularly attend the meetings of the board, the board's ability to function may be hindered.
- In order for a meeting to be legal, a majority or **quorum** of the board members must be present.

MEETING ATTENDANCE

- A quorum of the board is the minimum number of voting members who must be present in order for the board to conduct business. Board members also may be assigned certain tasks, and if you do not regularly attend to accept assignments or report on your actions, board business may not be performed efficiently.
- If you will not be able to regularly attend meeting, please reconsider your desire to sit on the board.

MEETING ATTENDANCE

REAL LIFE EXAMPLE

**Every Board MEMBER and
Every Board MEETING is important.**

Many issues faced by a board persist over months and even years. It is important to attend the meetings so that you don't miss out on valuable information and discussion. Your commitment to attend is very important, even if you don't feel that you are adding much.

If board members do not attend regularly, there may not be a quorum of members to vote when the time comes.

LOOKING AT THE BIG PICTURE

- Unless specifically authorized or designated, members of the board are considered to be representative of the entire association, and not of a particular neighborhood, street, or building.
- Board members are obligated to place personal concerns aside and to focus on the needs of the association as a whole.
- This does not mean that board members should not take strong positions on certain subjects, but rather that the board members must be aware of the need to consider the perspectives of all community members and not just their own.

LOOKING AT THE BIG PICTURE

REAL LIFE EXAMPLE

Carl joined the board because he is concerned about the landscaping in his entire community, not just his street.

Right! Carl needs to look at the impact of the board's decisions on the entire association, not just on the areas that he drives by everyday.

[CONFLICTS OF INTEREST]

A potential or real conflict of interest exists any time a board member may be in a position to place one person's needs or preferences (including his/her own) above those of another, potentially to the disadvantage of one of the parties.

[CONFLICTS OF INTEREST]

The following are typical examples of conflicts of interest within community governance:

1. A contractor offers to do special work for a board member if he receives a contract.
2. A contractor provides gifts to the board or the manager.
3. A resident who is a friend of a board member request special treatment in paying assessments, additional association expenditures for maintenance, or complying with the covenants.

[CONFLICTS OF INTEREST]

Potential and real conflicts of interest lurk near every board decision. Maryland [as well as West Virginia] law allows a corporation director to vote on an issue in which he /she has a possible conflict of interest if he/she discloses that conflict to the rest of the board, and if his/her vote is not the deciding vote.

[CONFLICTS OF INTEREST]

However, best practices include:

- **Full disclosure** of possible conflicts of interest. Any time a contractor or situation involves a family member or friend, or the offer (implied or real) of special treatment, a board members or community manager should immediately report this to the full board.
- For a board member or manager to recuses him- or herself from any vote that involves a potential conflict of interest.

[CONFLICTS OF INTEREST]

- Recognizing what is – and what is not – a conflict of interest under the law can be difficult and is not always self-evident. When in doubt, consult a qualified attorney.
- One way to avoid many conflicts of interest is to **always be open and transparent** in conducting board business.

[CONFLICTS OF INTEREST]

The best protection against allegations of conflict of interest is a commitment to **establishing and following procedures** for:

- bidding and awarding contract,
- enforcing rules,
- making payments,
- determining expenditure priorities.

CONFLICTS OF INTEREST

REAL LIFE EXAMPLE

Steve is the president of his HOA and he wishes to install a hot tub on his deck. He knows that the HOA has a rule that requires the HOA to act on all architectural applications within 45 days, and he also suspects no-one else on the board knows that deadline. Steve files his application and does not inform the board of the deadline. When the board misses the deadline, Steve goes ahead and installs the hot tub. If the Board sends a violation notice after the deadline, can Steve keep his hot tub?

As a member of the Board, Steve has a duty to place the HOA's interests above his own personal interests. He has a duty to inform the board of the rule rather than sit back and let the board make a mistake.

CONFLICTS OF INTEREST

REAL LIFE EXAMPLE

Mark sits on a board and recommends his brother's landscaping company.

Mark may provide an opinion and recommendation about the company, but he should disclose that his brother is involved with the company and he should not vote on the decision.

CONFLICTS OF INTEREST

REAL LIFE EXAMPLE

Sally sits on the board. She thinks that a different management company could manage the community better than the current management company. The proposed management company employs Sally's friend, but Sally's friend would not be the manager.

Sometimes it is difficult to determine whether a relationship creates a conflict of interest. Sally should disclose to the board the fact that she is a friend of an employee of the proposed company. She may choose not to vote, or the board may determine that no conflict of interest exists.

TEST QUESTIONS ETHICS

Which of the following duties must board members fulfill to demonstrate ethical behavior?

1. **Duty to negotiate**
2. **Duty to obligate funds**
3. **Duty to incorporate**
4. **Fiduciary Duty**

TEST QUESTIONS ETHICS

True or false:

Following procedures consistently is an element of ethical behavior.

- 1. TRUE**
- 2. FALSE**

TEST QUESTIONS ETHICS

True or false:

Board members may freely discuss personal information which they learn about their neighbors through their service on the board.

- 1. TRUE**
- 2. FALSE**

TEST QUESTIONS ETHICS

True or false:

As long as a board member is focused on the big picture when he or she votes, he or she does not need to disclose a potential conflict of interest.

- 1. TRUE**
- 2. FALSE**

TEST QUESTIONS ETHICS

Yes or No:

A contractor has offered to provide gift cards to members of the board of directors if he is selected to perform a contract. Is this a potential conflict of interest?

- 1. YES**
- 2. NO**

REFERENCE

Community Governance Fundamentals

Commission on Common Ownership Communities
Building Strong Communities Through Good Governance
Montgomery County, Maryland - Board of Directors Training

Members of a community association board of directors in Montgomery County, Maryland have been provided with basic training at the start of the new year 2016.

This unique free training is conducive to good management skills to handle the business of an HOA even in West Virginia.

EPOHOA encourages any HOA Member, director or not, to share information and increase their knowledge.

This EPOHOA session has been presented using one of six chapters available for Board of Directors' training online at:

<http://www2.montgomerycountymd.gov/ccoc-training/>

The key to good leadership - TRANSPARENCY



Wednesday 7PM April 13, 2016

Member Circulation

SHARING INFORMATION – INCREASING KNOWLEDGE

-----Reply Message-----

Subject: Community Governance Fundamentals Inquiry
Date: Tue, 29 Mar 2016
From: Fishbein Associates, Inc.

Dear Ms. Briscoe:

On behalf of the Montgomery County Commission on Common Ownership Communities, I wish to thank you for your kind and generous comments about our work. I am able to say, with total confidence, that your words buoyed the spirits of our commissioners, panel chairs and staff -- all of whom labor tirelessly to improve the quality of life in our common ownership communities and believe that only through good governance can communities anywhere hope to prosper. Like you, we strive to educate our governing boards and residents alike in the importance of incorporating best practices in all aspects of community management. This includes instilling a sense of respect for the rules that bind communities together as well as for the principles of civility, transparency, accountability, and integrity in all business operations.

It is extremely heartening to know that the work we are doing in Montgomery County is helping to benefit communities in West Virginia. To that end we would be pleased to share any resources we might have that could aid you in your important work. Should you or any of your colleagues on the EPOHOA find themselves in Montgomery County, we would be honored if you would stop by our office to speak with our staff, attend one of our monthly meetings or make time for coffee with our Commissioners. Please contact us in advance to schedule an appointment.

It always is good to hear from a sister organization dedicated, as the CCOC is, to good governance. In uncertain times such as these, the values of democratic governance that Americans hold dear, begin at the local level. Knowing that you and so many others around the county share this bond, surely is an inspiration to us all. Good luck to you in all of your endeavors. Thank you again for your uplifting and complimentary e-mail. Please stay in touch.

Best wishes,
Randy
Rand H. Fishbein, Ph.D.
Chair, Montgomery County Commission on Common Ownership Communities

P.S. If you would allow me a personal sidebar.... I used to serve as a Professional Staff Member on the U.S. Senate Appropriations Committee under the distinguished chairmanship of the Honorable Robert C. Byrd. My grandmother grew up in Waynesburg, PA, just across the border from Morgantown, W.V.



Wednesday 7PM April 13, 2016

Member Circulation

SHARING INFORMATION – INCREASING KNOWLEDGE

-----Original Message-----

From: Nance Briscoe
Sent: Saturday, March 19, 2016
To: CCOC
Subject: Community Governance Fundamentals Inquiry

Good Afternoon Commission on Common Ownership Communities,

Several HOAs in West Virginia are very pleased to be able to freely learn, share information and increase knowledge. The Eastern Panhandle Organization of Homeowners Associations (EPOHOA) has followed your progress and couldn't wait for January 2016. Today one of your chapters, ETHICS, was demonstrated to our group at our regularly scheduled meeting. We have encouraged not just HOA Board of Directors to take your training but also individual homeowners so they too may have a grasp of what is expected in HOA leadership.

While we are aware of referenced MD laws & regulations we do look into what WV has in comparison, sadly not much at all. WV has no oversight.

We try very hard to reach out to our legislators, local and state. Our organization was developed due to the lack of representation, advocacy, mediation, mitigation and simply where can a WV HOA go for assistance in running the business of the association. EPOHOA has tackled several issues by holding hands so-to-speak with our HOA members. We've joined Community Associations Institute (CAI) as a board of directors and literally eaten the words of many CAI publications, sharing what we've learned and going forward with a proactive stand.

The seeds that Montgomery County is planting for the good of the whole are flourishing with optimism and much needed guidance in West Virginia.

As one of the original founders of our Organization I personally thank Montgomery County for stepping up to the plate.

With sincere appreciation,
Nance Briscoe, EPOHOA Vice President & Membership Chairman
22 Cloverdale Place
Charles Town, WV 25414
(304) 728-2201
EPOHOA.org
info@epohoa.org

SIDE BAR: after our family relocated from Los Alamos, NM in 1982 our first home was in Seneca Forest, Germantown MD.