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HOA Board Governance: A Model Code o . . .

HOA Board Governance: A Model Code of Conduct for Board Members

July 2024

There's no shame in admitting that sometimes you're not sure of your responsibility as a board member. Being a board member is a volunteer position, and few associations offer training that provides in-depth guidance for well-intentioned but inexperienced board members. That's why you need a model code of conduct for your board members.

If you don't think that a simple list of guidelines

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would help your board, think again. "The general consensus is that a model code is a good idea, and we find them really helpful," says Elizabeth White, a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va. "For a lot of board members, when they vote to approve a code of conduct, it makes them stop and think. But it also gives the rest of the board and management something to point to when a board member starts straying outside the appropriate lane. It gives them something objective to evaluate behavior against. It also prevents board members from saying, 'I didn't know that was inappropriate. I didn't know accepting a Christmas gift from my landscaper, who also happens to be the association's landscaper, wasn't proper.'"

That's why we've asked our experts for their best advice on the conduct that board members should always follow, along with conduct boards should avoid. Here's that list.

1) Commit your time. If you agree to be a board member, make your service a priority. Expect to attend as many meetings as you can, and attend almost all of them.

2) Know your rules, your budget, and your building. Read, reread, and be well versed in your governing documents and prior minutes. Those documents are your foundation. Read all relevant materials before meetings so you're prepared to discuss issues and make sound decisions. Be very well versed in your association's budgetary requirements and restraints. Know such things as what it costs to heat the building and employ each doorman or



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security guard. Become an expert in your building and grounds. Know your building physically. Know what it takes to maintain the building, the landscaping, the facilities, and the roof.

3) Remember your fiduciary duties. Recognize that board members operate in a fiduciary capacity, which means you're entrusted with the operation of the association and doing what's in the association's best interest, not even in the interest of the owners. Here's an example: Your association wants to purchase one of its own units for an on-site manager to live in. If you become aware that there's a unit for sale at a very favorable price, yet you buy that unit yourself, you've breached your fiduciary duty to the association. Instead, you should have first told the association of the availability of that unit. If the association voted not to buy it for whatever reason, you'd be free to buy it.

Acting in the association's best interest also means making decisions on the merits, not because you have an ax to grind or a personal agenda. Don't solicit or accept gifts, gratuities, or favors, especially with those given with the intent of influencing a decision. Don't seek preferential treatment from board members, committees, contractors, or suppliers. Don't receive compensation for serving on the board. Don't advance a personal cause by using your position on the board to enhance your financial status through the use of particular contractors or suppliers.

4) Know the professionals you're dealing with. Be on a first-name basis with your manager, CPA, and attorney so that you feel comfortable calling for

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advice and support.

5) Always comply with your governing documents and relevant laws.

6) Use competitive bidding. The easiest way to avoid the appearance of impropriety in association contracts is to seek competitive bids for all projects over a certain amount, say \$500.

7) Work within the association's framework and refrain from unilateral action. Discuss board business only at board meetings, not at ad hoc meetings. And remember that the board speaks with one voice. If there's a board decision you disagree with, once it's made, support it.

8) Always exhibit professional behavior. Treat your constituents—unit owners—with respect and decency. You'll be surprised at how many problems don't happen when there's open dialogue between the board and association members. Don't harass association members or residents, and refrain from defaming anyone in the community, including your manager and attorney.

9) Maintain confidentiality of association matters when it's appropriate. For example, if your association is involved in litigation with an owner, you should never discuss board actions and decisions about the litigation outside board meetings—ever.

10) Promptly disclose conflicts of interest, and take immediate action when one arises. Here's an example: Your board plans to vote on a landscaping contract. Your brother owns a landscaping

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company. It's best if your brother doesn't enter the competition. However, if he does, at a minimum, you should announce that your brother is one of the companies that will bid, and then you should leave the room and not take part in any discussion on the contract. Also insist that the board minutes note that you've recused yourself from the discussion and that portion of the meeting.

Sources: [Robert Galvin](#), a partner at Davis, Malm & D'Agostine PC in Boston who specializes in representing condos and co-ops; [Luigi Rosabianca](#), the principal attorney at Rosabianca & Associates in New York City, who advises condo associations and co-ops; [Elizabeth White](#), a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va.; [Marc A. Silverman](#), an attorney at Frank, Weinberg & Black PL who advises associations.

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