

## Summary of the 18 Nov 2020 WVOHOA Education Seminar

Topic: Ethics for HOA Board of Directors, Committees, Volunteers and Homeowners – Moral Principles of YOUR Behavior

Format: Zoom Seminar followed by Q&A

The West Virginia Organization of Homeowners Associations was organized to draw together insightful, active, and civil discussions among HOA homeowners, individuals and businesses. We focus on issues relating to the preservation and promotion of the present and future welfare of homeowners in West Virginia. WVOHOA does not provide legal counsel or endorse businesses, professional services or political parties.

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Ethics and Conduct are related but not the same. Ethics are the moral principles upon which one's fundamental behavior is based. Conduct is the manner in which one behaves based on their morals, understanding and state of mind. Behavior is an individual expectation based upon such moral principles as:

- Right vs wrong
- Good vs bad
- Honest vs dishonest
- Kind vs mean
- Respect vs disrespect
- Trust vs distrust

Utilizing a Code of Conduct and a Code of ethics:

The two are not the same but go hand in hand. A code of conduct is how the individuals will behave themselves. The code of conduct is an outward facing creed that is based on a code of ethics which is an inward facing creed and provides the foundations for the outward facing actions. A code of ethics should be based on integrity, objectivity, due care and confidentiality. Communication and transparency are key means of conveying facts, intent, and explanations to the community and thereby increasing trust and respect for the Board.

Board Members should:

- Strive to serve the community as a whole, not their personal interests
- Use sound judgement based on the best available information
- Act only within the boundary of their authority
- Provide opportunities for homeowners to comment on decisions facing the community
- Be unbiased – treat everyone alike
- Disclose any personal or professional relationships with any entity that is seeking a business relationship with the association
- Conduct open, fair and well-publicized elections
- Always speak with one voice, supporting all duly adopted Board decisions

Board Members should not:

- Reveal confidential (business or personal) or pre-decisional information that the Board has privileged access to, such as bids for contracts
- Make unauthorized promises to a contractor or potential contractor
- Advocate or support any action or activity that violates a law or regulatory requirement
- Use their position or authority for personal gain or advantage
- Spend unauthorized association funds for personal use or benefit
- Accept gifts, directly or indirectly, from owners, residents, contractors or suppliers
- Misrepresent known facts in any issue involving association business
- Use or divulge any personally identifiable information, obtained in the performance of Board duties, for any improper use such as any activity that would generate or solicit money or selling the a membership list
- Make personal attacks on colleagues, staff, contractors, owners, residents or guests
- Harass, threaten or attempt through any means to control or instill fear in any Board member, members, resident, employee, or contractor
- Reveal to any non-Board member any discussions, decisions or comments made during any meeting of the Board properly closed or held in executive session.

The decisions made have typically not as simple as they seem, probably have several alternatives and multiple repercussions frequently affecting many or all of the owners, residents and guests. Do the due diligence and research, survey, test, evaluate AND communicate before acting.

Include the association's code of ethics/code of conduct with the governing documents.

Those acting in the behalf of the community should be made aware of the code of ethics/code of conduct.

For a Board member to be legally found unethical, the courts typically apply the "business judgement rule" that requires proof of that the person acted fraudulently, recklessly or in bad faith. In WV acting in bad faith is a key aspect sought by the courts.

The CCOC provides Board member training and pages 48-53 of their manual is focused on ethics. This material is available both from the Commission on Common Ownership Communities (CCOC) or from the WVOHOA website. The Community Associations Institute (CAI) also has information available on this topic.

Questions:

If you allow homeowners to the BOD meetings how do you accomplish business of sensitive nature without giving up names and details of an issue?

You convene an executive session for that discussion.

How do you take the CCOC training?

Either directly from CCOC or virtually. Go to either the CCOC website or the WVOHOA website for more details.

The HOA is a Member – how do the homeowners gain access to the resources on the WVOHOA page?

They will need the password to get to the password protected portions of the website. If you should have the password, but do not, please contact the WVOHOA to obtain it. Please be aware it changes each year.

Is it common practice to require homeowners to write their lot number on their annual election ballots?

Check your governing documents. If they require it, then so be it. If they do not require it, then a secret ballot may be appropriate for your elections. Using a number on ballots is a means of checking for duplicates, but a control number can serve that purpose as well – for example 2020-1-XXXX where the XXXX is series of numbers that starts with a random number and is printed on the ballot; therefore any ballots that fall within the range of numbers generated will be accepted. Some votes at the annual meeting may not need a secret ballot such as ratifying the budget which may be done by voice vote.

Is it ethical to make the vote not anonymous?

It depends on your governing documents and it depends on the type of vote. Robert's Rules allows for voice votes on many items. For those items that should be conducted as a secret ballot, then every effort should be made to keep the voting anonymous. If you are looking for electronic secret voting, please keep in mind that survey software generally is not anonymous. Alternatively, software is available that was specifically designed for secret ballot voting that affords anonymity.