



The Board of Director's Code of Conduct

MULCAHY Community Association Cheat Sheet®

**BRINGING ANSWERS
TO COMMUNITY
ASSOCIATIONS**

This publication discusses significant points of law as they apply to community associations and is not intended to offer specific legal advice or responses to individual circumstances or problems.

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CODE OF CONDUCT OVERVIEW

An association board of director's code of conduct explains the expectations of board members with regard to ethical rules and procedures, standards of behavior and professional conduct while they serve as a director for their association. The code may be necessary because of director's diverse work experiences, personalities and reasons for serving. A code of conduct creates common ground in which all can work in furtherance of the goals of the association.

CODE OF CONDUCT FORMAT FOR BOARD AND MEMBERSHIP

The board of directors can choose to do a very formal code of conduct written as a resolution, a list of expectations or a list of fiduciary duties. The list can be general in wording or very specific. The code can be adopted by the board as a whole or by each member and should be signed and dated. The board cannot require directors to sign a code of conduct unless the association's documents (CCRs, bylaws or articles) require a code of conduct to be signed.

The code of conduct cannot violate the association's governing documents so it would be wise to draft the code and have it reviewed by a community association attorney.

The board of directors may also consider creating a code of conduct for board meetings to include what is expected of members in a board meeting such as, the length of time given to members to address the board, only allowing one speaker at a time, no abusive language, no personal attacks, no yelling, etc. The code should be in writing and handed to everyone at each board meeting. By doing this it sets a standard by which the meeting will be conducted. If proper decorum cannot be followed then the meeting should be adjourned and reconvened at a later date.

FIDUCIARY DUTIES AS A CODE OF CONDUCT

A Code of Conduct may include the fiduciary duties each board member accepts when he/she agrees to serve as a member of the board of directors. A fiduciary is one who holds something in trust for another.

Example of Fiduciary Duties as the Code of Conduct:

As a member of the (insert association name) board of directors, in accepting a seat on the board, and in agreeing to serve as a member of the board, I hereby acknowledge that my position on the board places me in a fiduciary relationship with (insert association name) and obligates me to carry out my duties with care, loyalty and confidentiality.

Duty of Care:

In exercising the duty of care, I will make an honest effort to render an informed decision with respect to each issue that may come before the board. I will exercise due diligence in being familiar with the association's governing documents and established procedures and will make a reasonable attempt at all times to understand the issues and options brought before the board. I will use good judgment in acting on behalf of the corporation.

Duty of Loyalty:

In exercising the duty of loyalty, I will refrain from taking actions that are contrary or detrimental to the interests of the association. I will not conduct myself in any manner that conflicts with the interests of the association and/or has the likelihood of causing damage to the association and/or its members. I agree to be bound by the standards of conduct for directors of a corporation, as set forth in association bylaws and the Arizona Nonprofit Corporation Act, A.R.S. § 10-3830(A), which requires that I discharge my duties as a board member in good faith, within the scope of the authority given me under the governing documents and statutes, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

Duty of Confidentiality:

In exercising the duty of confidentiality, I acknowledge that information may come into my possession as a board member that has proprietary, confidential or privileged status, whether the information is communicated in verbal or written form. I agree to maintain the confidentiality of all information provided to me and agree not to disclose proprietary, confidential or privileged information to anyone outside the board without the prior written authority or approval of the entire board of directors.

The date and signature should follow.

A RESOLUTION AND LIST OF PRINCIPLES AS A CODE OF CONDUCT

In a Resolution, the Code of Conduct opening lines would be similar to the following:

WHEREAS, the bylaws of (insert association name) has delegated the authority and responsibility to govern the operations of the community to its board of directors, and

WHEREAS, the board of directors is responsible to appoint officers and committee members, and to solicit/involve other volunteers, and

WHEREAS, the board has the fiduciary duty and responsibility to set a standard and level of behavior that is in the best interests of the entire community,

NOW, THEREFORE, BE IT RESOLVED THAT the board of directors of (insert association name) hereby adopts the following Code of Conduct, standards of behavior, ethical rules and procedures that are applicable to all board members, officers, committee members and other volunteers serving the community. After the statement of principles, the resolution would have a date of ratification and signatures by board members attesting to his/her acceptance.

In a List of Principles, the Code of Conduct opening lines would be similar to the following:

The (insert association name) board of directors has approved the following code of conduct for its members in order to ensure that they maintain a high standard of conduct while serving in the performance of association business.

The following principles constitute the code of conduct:

A signature(s) and date of acceptance would follow the principles.

EXAMPLES OF PRINCIPLES AND GUIDELINES WITHIN A CODE OF CONDUCT

1. The board of directors will use their best efforts at all times to make decisions that are consistent with high principles and the best interest of the association.
2. The board of directors will seek to protect and enhance the safety and property value of the residents.
3. No board or committee member shall receive compensation for serving on behalf of the association, except for expense reimbursements approved by the board of directors or for specific functions as approved by the board.
4. No board member shall solicit or accept, directly or indirectly, any gifts, gratuity, favor, entertainment, loan, or any other thing of monetary value made with the intent of influencing decisions or actions on any official matter, or from a person who is seeking to obtain contractual or other business or financial relations with the association.
5. No promise or anything not approved by the board shall be made to any contractor, supplier or subcontractor during any negotiations.
6. No contributions will be made to any political parties or political candidates by the association.
7. Confidentiality of all residents' personal lives will be protected by the board and committee members.
8. Language at board meetings and other meetings will be professional. It is understood that differences of opinion will exist. Differences should be expressed in a clear and business-like fashion.
9. No board member shall engage in any writing, publishing or speech making that defames any other member of the board, community leader or resident of the community. Personal attacks against board members, other community leaders, owners, residents or the association's designated management company are prohibited and are not consistent with the best interests of the community.
10. No board member or committee member will knowingly misrepresent facts to the residents or the community for the sole purpose of advancing a personal cause of influencing the community to place pressure on the board to advance a personal cause.
11. No board member serving the community may use his/her position to enhance his/her financial status through the use of certain contractors or suppliers. A board member should notify the board of any potential conflict of interest.
12. No board member will seek to have a contract implemented that has not been approved by the board.
13. No board member will interfere with a contractor implementing a contract in progress. All communications with contractors will go through the managing agent or be in accordance with policy.
14. No board member will interfere with the system of management established by the board and its designated management company.
15. By virtue of serving on the board of directors, a member agrees to set an example for all member and follow the documents of the association.
16. New board members will be given a copy of this code of conduct and will be asked to sign it to signify that they have received it, have read it and agree to abide by it.

Typically a Code of Conduct is signed and dated and placed in the community association records.

What if? Should a board member refuse to sign a code of conduct, there is no legal action to force him/her to sign.