

Do You Need to Adopt a HOA Board Ethics Policy?

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Some homeowner associations are passing ethics policies that boards must follow. Do they make a difference in board behavior?

Not Necessary, But They Can't Hurt

Generally, our experts say an ethics policy can be helpful for a board to adopt. But the lack of a policy doesn't hurt HOAs.

"I don't think it's objectionable," says [Robert Galvin](#), a partner at Davis, Malm & D'Agostine PC in Boston who specializes in representing condos and co-ops. "I've heard of some boards doing it, but I don't think I've ever seen a board do it. And when I get hired, I don't say, 'Do you folks have a written ethics policy? I think you should.'"

Ethics policies aren't common in Nevada, either, perhaps because state laws are so strict. "Nevada is so heavily regulated," says Chris Yergensen, senior vice president and corporate counsel of RMI Management, a Las Vegas-based company that manages about 300 condo association and HOAs. "There are numerous provisions that don't just cover [board fiduciary duties](#) but also an entire section of our law covers what boards can and can't do. The statute really creates an ethics policy, so I don't think anyone formally does an ethics policy in Nevada. We just rely on the law."

Florida law also spells out boards' behavior, says Andrew Lewis of Eisinger, Brown, Lewis, Frankel & Chaiet PA in Hollywood, Fla., who specializes in representing [community associations](#). "I really don't see a need for an ethics policy," he explains. "Florida law already creates fiduciary relationships between officers and directors and the association. If they take any action, they're either fulfilling their fiduciary duty or not. Regardless of whether they're breaking their association's ethics policy, the question is whether they're meeting their fiduciary duties."

Yet there can still be value to crafting an ethics policy that complements training for new board members. "Having ethics training is really an important part of the board training process," says [Elizabeth White](#), a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Va. "When you have [written policies](#), it brings that training home to people. We all learn differently. Some people are visual learners, and if they have to sign something, it helps them learn. Also, when you're litigating a dispute, it helps to have those written policies to fall back on and that allow you to say, 'That director did something against our policy.' That can be good defensive mechanism for an association, and I like to see it."

Ethics or Conduct?

Though some association lawyers say they don't see many ethics policies, they do see board conduct policies.

"Most of our associations do have a conduct policy governing how members will conduct themselves at their meetings," says Yergensen. "People can get abusive, so we'll have a policy that states that board members must conduct themselves in a professional manner, not use vulgarity, not engage in personal attacks, and will have three minutes to speak. Our policies also say that if the board feels conduct isn't in accordance with the policy, the board can move to cancel, terminate, or reschedule

the meeting. That allows a little bit of cover if a meeting gets out of hand, and it applies to board behavior as well."

White has seen ethics issues covered in several types of policies. "Sometimes we put those issues in a written standard of conduct policy for the board," she says. "It's a layman's succinct summary of the board's fiduciary duties, and it'll include things like the duty to avoid conflicts and self dealing. Some also roll these issues into their confidentiality policy."

Whatever your policies say, Galvin says board training is critical. "It's important that board members who've just joined receive some kind of training," he says. "It can simply be a brochure on board members' duties in an association. Board members don't have to attend classes, but someone should inform them of their ethical duties—although I think it's pretty obvious that their ethical duty includes putting the association's interests ahead of their own personal interest and not making a profit from their service on the board. One would hope most people who run for board positions would understand things like that."