



[Home](#) > [Board Operations](#) > Put it in Writing  
[Home](#) > [2010](#) > [2010 Oct](#) > Put it in Writing

## Put it in Writing

Codes of Ethics Give Board Members Direction  
By Susan Philips Plese

The sitting president of a board of directors of a homeowners association in Connecticut recently approached management with a proposition.

If he awarded her boyfriend job contracts, the property manager would receive a kickback.

Ken Kohnle, working with Elite Property Management based in Farmington, Connecticut, ended the relationship. He said it was the "most shocking" of ethical breaches he'd seen in 22 years of business. The incident shows what appears to be a problem, not just in New England, but all over the country.



### Article Options

- [Email to Friend](#)
- [Print Article](#)
- [Add to Favorites](#)
- [Add to 'Articles to Read'](#)
- [Comments](#)

### The Best HOA Web Sites

98% Of Our Clients Stick With Us, Because We Save Them Time and Money



### Homeowners Association

Free Info On Homeowners Assiation Laws & Attorneys. Trust FindLaw!

Ads by Google

By most estimates, the vast majority of New England condominium boards don't have a code of ethics, although most board members are honest and want to do what's best for their communities.

But having a code of ethics that spells out the "dos and don'ts" for board members clarifies instances where the prospect of personal gain may tempt a board member to do something the wrong way.

Kohnle said his company has an unwritten rule: "You do things the right way." But what is the "right way?" And how does one publicize or teach "the right way?"

## Ethics Different Than Morals

Ethics are not the same as morals. Morals often intersect with religion or upbringing. Ethics proscribe behavior in professional settings. Doctors, attorneys, social workers, journalists and some corporations have written codes of ethics, dealing often with conflict of interest, confidentiality, and in the case of doctors, the Hippocratic Oath that includes "Do no harm."

But HOAs, at least in New England, have been slow to write their own codes.

### Reserve Study Software

Professional or HOA software We make reserve studies easy



### How We Choose Our Values

and how they shape our lives. Books available online.

Ads by Google

A code of ethics is not a legal document. It's a code of conduct, self-imposed and self-monitored. Someone once said that "ethics are what you practice when no one is around." Additionally, what is legal may not be ethical. For example, it's not illegal for a contractor to give a case of wine to a board member, but it is unethical.

Basically, ethics are principles that govern behavior. Once codified, they become part of the corporate

### Association Operations

- Management
- Maintenance
- Landscaping
- Recreation
- Finance
- Security
- Insurance
- Design
- Communications
- Energy Conservation

### On The Board

- Board Operations
- Board/Shareholder
- Board/Management
- Law & Legislation

### HOA Living

- Neighborhoods
- Associations
- Organizations
- Community Building
- Real Estate Trends
- Buying & Selling

**David A. Levy, CPA, P.C.**  
Certified Public Accountants

11 Kent Street  
Brookline, MA 02445  
Tel: (617) 566-3645  
(866) 842-0108  
Fax: (617) 681-2377  
www.DALCPAPC.net

### Magazine Subscription



Subscribe to "New England Condominium" magazine - it is Free  
[Manage my subscriptions](#)

### E-Mail Newsletter

Would you prefer receiving the summary of new articles by e-mail? Your E-Mail:

[Manage my newsletter settings](#)

- [Become a fan on Facebook](#)
- [Follow us on Twitter](#)

### Recent Comments (all Articles)

[Federal Form 1120-H, 990 or 1120?](#)

WJY

[we are a POA that is incorporated as a not for](#)

[Volunteer Profile](#)

An unknown user

[what if the number of board members goes by](#)

[Managing Your Reserve Fund](#)

Mike

[Is a bond fund or an income fund a good idea](#)

[A Rash of Thefts](#)

An unknown user

[How about kickbacks and project bid manipula](#)

or personal culture. A written code also simplifies thorny decision-making, by offering guidelines and training before a crisis occurs.

Attorney Frank Lombardi practices community association law exclusively, as a partner with Goodman, Shapiro & Lombardi, LLC with offices in Providence, Rhode Island, and Dedham, Massachusetts.

A key to compliance with any code, he said, is a third person, a kind of "watchdog" who has allegiance to neither the developer, board members, nor management. The Rhode Island Condominium Act already lays out a standard: the obligation of "good faith," which, in Lombardi's opinion, would prohibit property managers from "double dipping": a conflict of interest that would occur if a property manager acted also as a general or subcontractor for major capital property improvements.

It would also address the practice of compensating a popular, hard-working board member indirectly, by not charging an assessment fee, for example, a move that would raise issues of accountability and taxes, Lombardi noted.

But at this point, Lombardi doesn't foresee any rush for associations to draft formal codes of conduct or ethics. "Removing a board member for unethical behavior could be accomplished by a vote of the requisite number of unit owners," he said.

**Condo Reserve Studies**

FHA and FNMA Approval Compliant  
Performed by Professional Engineers

**How We Choose Our Values**

and how they shape our lives. Books  
available online.



Ads by Google

### Codes Allow Objective Evaluation

HOAleader.com applies a rationale to written codes. Elizabeth White, a shareholder and head of the community associations practice at the law firm of LeClairRyan in Williamsburg, Virginia, writes in the online site: "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 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 accepting a Christmas gift from my landscaper, who also happens to be the association's landscaper, wasn't proper'."

Realty Times, an online real estate news service, recently printed a sample code of ethics that could be adapted to any board and reprinted with permission (See sidebar.)

A number of other websites have also published sample codes that can be read and signed by boards of board members of HOAs. The Community Associations Institute (CAI) offers sample codes for boards. Association Times, which bills itself as a web resource for community associations, also prints templates for use in constructing ethics documents.

### Nine Potential Trouble Areas

Gardiner Miller Arnold LLP of Toronto, a law firm that specializes in condominium law, offers a free generic template intended for any condominium board to sign. It includes nine major areas, including conflict of interest and confidentiality.

Conflict of interest occurs when a board member may directly or indirectly profit from a vote or action. Transparency requires that any potential conflicts of interest be identified as soon as they are recognized. In some cases, it may require a board member to recuse himself or herself from a vote. Similarly, a board member agrees to act in the best interests of the HOA, not in his or her own best interests.

For example, if a large scale improvement is anticipated, such as roofing, and the brother of a board member bids for a contract, the board member would be expected to reveal that conflict and probably recuse himself from both the discussion and vote. Even the appearance of impropriety is unacceptable, Lombardi said.

Confidentiality is no different for an HOA board than for any other. Confidential business cannot be shared with friends or even a spouse. Decorum has its place, also, both in speech and public practice. Professional conduct, respect for others and loyalty to the HOA are expected. Board members are not

### Articles

- Popular
- Recent
- Favourite
- Read

#### Popular Articles

- [Federal Form 1120-H, 990 or 1120?](#)
- [Amending Your Bylaws](#)
- [Using Eco-Friendly Cleaning Products](#)
- [Self-Management](#)
- [Switching Management Companies](#)

“above the law” and are expected to pay fees according to schedule.

Loyalty does not mean that a board member has a blind commitment to the board; it simply means that a boardmember is required to accept board decisions gracefully and support them publicly.

The need for codes is obvious when one reads new accounts of businesses that work outside of the law, employees who embezzle, or public officials who use their positions to obtain favors.

But board members are volunteers, some without experience, who have a daunting mission. Many may be new to such a position, and don't understand what is expected of them, especially in terms of ethical conduct.

## Written Code Most Effective

A formal, written code, phrased in simple terms and including likely scenarios for that particular HOA, is most effective, according to The Network, a information lifecycle management company based in Norcross, Georgia, which also maintains a website. In other words, if the ethics code is phrased in “corporate-speak,” and contains no specific real-life examples that a board member may experience, the code may be ineffective.

The Network also encourages using graphic “designs that engage,” making the code accessible, and translating into all languages spoken by those affected.

Important, also, is that boards conduct meetings according to parliamentary procedure, to ensure order, professional behavior and strict attention to the agenda.

Because codes of ethics are not mandatory, are not legal documents, and depend on the integrity of all who fall under their jurisdiction, what happens if a code is breached? Or if no code is written, what happens if someone is clearly out of order? In practice, the offender could be released from his or her duties by vote. In reality, it's often not that simple, given human nature.

Unfortunately, some board members can get too much enjoyment out of being in power and can even work against their fellow members. In some cases, a board member may lobby others secretly, or mislead homeowners with skewed information.

HOAs without a manager face even more difficulties. A small developer, for instance, may put five to 20 units together, and may not be able to afford a professional manager. Bills pile up, no one collects those that are overdue, people run up tabs and suddenly the development faces financial problems. Industry veterans suggest that associations consider hiring some kind of professional manager, or at least a bookkeeper, to avoid such problems.

Homeowner associations are relatively new in the United States, appearing around the early 1970s, Attorney Lombardi said, though such societies were found in ancient Rome, and the word “condo” comes from Latin. Those communities, however, operated more like communes, in which everyone shared duties, such as planting, harvesting, maintaining structures, caring for children and elders. They also shared in any profits.

Social forces, however, will necessitate regulation of this modern structure, Lombardi said. What he calls a “rogue board member” cannot excuse errant behavior after signing a contract (see sidebar) that delineates unethical conduct.

*Susan Phillips Plese is a freelance writer and a frequent contributor to New England Condominium magazine.*