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# Durham Park Association

## Ethics and Standards for Board Members

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# Table of Contents

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Durham Park Association.....	1
Ethics and Standards for Board Members .....	1
Description and purpose .....	1
Ethical Dilemmas.....	1
Fiduciary Responsibilities .....	2
The Practice of Ethics.....	2
The Business Judgment Rule .....	3
Duties Of Board Members .....	4
Conclusion.....	5
BOARD MEMBER CODE OF ETHICS .....	6

# Durham Park Association

## Ethics and Standards for Board Members

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### Description and purpose

The purpose of this document is to provide Board Members with practical tools designed to identify and implement ethical value systems for their duties within the association. These tools will help a Board Member navigate through the complex ethical issues that can occur in the everyday administration, management and governance of the Durham Park Association.

### Ethical Dilemmas

Many ethical dilemmas faced by board members on a daily basis are not clear cut, black and white issues. There are often no “Right” or “Wrong” answers in an ethical dilemma, but with that said, how you deal with an ethical dilemma says a lot about you, and your association. According to Kenneth Blanchard and Norman Vincent Peale, in *The Power of Ethical Management* there are three important questions you should ask yourself when faced with an ethical choice:

1. Is it Legal? In other words, will there be any potential litigation, criminal or civil penalties, or violation of the HOA’s governing documents?
2. Is it Balanced? Is it fair to all parties concerned in both short and long term?
3. Is it Right? How does the decision make your feel about yourself? Are you proud of the decision? What will people say about this decision in five years? Will it be as proud a moment then?

Most of the time, when dealing with an ethical question, answering one of these questions is not enough. However, if you take the time to answer all three, the correct ethical choice becomes clear.

Our voluntary organization has exactly the same fiduciary duties and responsibilities as the boards who run large corporations, the difference is that our choices will be compared to other non-profit and volunteer organizations and may even come under the scrutiny in a court of law, and while Texaco, McDonalds, or US Bank have fleets of attorneys to help them if they run get into trouble, we have each other and an insurance policy.

### Fiduciary Responsibilities

To maintain protection from liability as volunteer directors, we have a fiduciary duty to act

1. in good faith at all times
2. in the best interests of the community at large
3. to not represent any special interests, groups or persons to our or their advantage
4. using care and reasonable inquiry, as any ordinarily prudent person would under similar circumstances
5. without making decisions that benefit our own self-interests
6. without adversely affecting the association financially, legally or otherwise

It is important for all board members, especially new ones, to familiarize themselves with their fiduciary responsibilities to insure that they are acting ethically in order to properly protect their individual actions and the actions of their board and the association.

### The Practice of Ethics

The practice of ethics by a board member involves knowing what behavior or conduct is right or wrong, in the governance of their association, and then doing what is right. Simply put, ethics is what you do when no one else is looking. Ethics are the “Moral Compass” and standards recognized in the performance of a directors duties and the responsible governance of an organization. These standards are established in part, by Texas law. Ethics choices are necessary:

- Between individual board members
- Between the board and the homeowners/residents
- Between the board and association experts and consultants
- Between the board and its chosen vendors

However, at all times, the board should remain focused on the main purposes of the association, which is to:

- Protect and preserve the associations common areas and other real, personal and intangible assets
- Manage the associations finances, including meeting statutory budgeting and disclosure requirements, providing for reserve funding and pursuing assessment collections
- Promote the homeowners unimpeded and safe use and enjoyment of the associations common areas, exclusive use common areas and separate interests
- Enforcing the associations governing documents

Also remember that sometimes doing nothing can also be a breach of a board members ethical duties. Board Members cannot turn a “blind eye” to matters affecting the well being of the association, or which can put the board or the association at risk.

Remember: Making no decision **is** a decision.

### **The Business Judgment Rule**

The Business Judgment Rule is a presumption that the Board Members decisions are based on *Sound Business Judgment* which can be rebutted only by a factual showing of *fraud, bad faith* or *gross overreaching*.

Courts have upheld that they will defer to the Boards Authority and presumed expertise in discretionary decisions regarding the maintenance and repair of common interest property, provided the boards decisions meet the following tests:

- They are based upon reasonable investigation
- They are made in good faith and the best interest of the community at large
- They are within the scope of authority given the board under relevant Texas Statute and applicable covenants, conditions, and restrictions (CC&R's)

Assuming the board has acted in accordance with these factors, the board could seemingly have done no wrongdoing in performing any action that may be questioned. However, each board member must independently investigate facts particular to a situation before taking any action, consulting with experts or consultants when it is prudent to do so, and may rely on information, opinions, reports or statements prepared by experts and consultants.

## Duties Of Board Members

- Duty Of Knowledge
  - The Board is responsible for enforcing the governing documents, so each board member must be familiar with them, their purpose, and their contents
- Duty Of Financial Management
  - The Board is responsible for managing the finances and business of the association, including levying and collecting assessments, review of financial records and distribution of required disclosures
- Duty Of Maintenance
  - The Board is responsible for the maintenance, repair and replacement of the common area components, and should plan for and execute appropriate budgets and deferrals according to their Duty Of Financial Management
- Duty Of Operation
  - The Board is responsible for the operation and management of the common area facilities, such as buildings, pools and parks. The board is also responsible for contracting and paying for services provided to the associations, such as mowing, landscaping, janitorial, utilities and similar
- Duty Of Enforcement
  - The Board is responsible for enforcing use restriction violations, delinquencies, architectural restrictions, nuisance restrictions, health and safety hazards, as well as imposing suspensions, fines and fees
- Duty Of Leadership
  - An Effective and Ethical board member is:
    - Future Oriented
    - A Team Player
    - Self-Disciplined
    - Actively participating
    - An appropriate delegator
    - Open and willing to learn
    - Connected to the community
    - Passionate about the success of the Association and it's members
  - While an ineffective or unethical board member is
    - Not enforcing the associations governing documents
    - Acting in a disparate manner towards or away from certain homeowners
    - Advancing self-serving interests to further their own agenda

- Not following the requirements of the governing documents, statutes or other requirements
- Not adhering to the Business Judgment Rules
- Violating governing documents
- Revealing attorney/client or Executive Session discussions
- Violating the law

### Conclusion

The principals behind ethical rules are to guide people in the performance of their duties and express the basic tenets of ethical and professional conduct. A code of conduct for a board can be a valuable tool to ensure that board members are aware of the “line in the sand” when it comes to grey matters and hopefully help turn an otherwise confusing situation into a clear decision. To ensure that the association and board members are adequately protected, a Board Member should act ethically at all times.

# BOARD MEMBER CODE OF ETHICS

As a board member you always need to remember that more is expected from those in leadership roles. Please review the following statements. As a board member you will be required to follow these practices and insure your commitment to honest and professional Association service.

As a member of this board, I shall:

- Focus on governance for and not management of the association
- Be committed to fulfilling the mission and vision of the Durham Park Association
- Keep all confidential board information confidential
- Focus my efforts on the Durham Park Association and not my personal goals
- Serve on a committee or task force in a leadership capacity
- Refrain from using my service on this board for my own personal advantage or for the advantage of my friends, associates, or special interests
- Respect and support the majority decisions of the board
- Approach all board issues with an open mind and be prepared to make the best decision for everyone involved, remembering that my decisions should be focused on the best long-term answer
- Do nothing to violate the trust of those who elected me, or those who we serve (the residents/homeowners)
- Never exercise authority as a board member except when acting in a board meeting or as delegated by the board or its president
- Continue to maintain Durham Park Association Board Member Candidate Qualifications
- Consider myself a trustee of this organization and do my best to insure that it is well maintained, financially secure, growing and always operating within the best interests of those whom we serve – the members.

# Bibliography

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Excerpt from [http://www.hoalawblog.com/Ethics Article.pdf](http://www.hoalawblog.com/Ethics%20Article.pdf)

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Kenneth Blanchard and Norman Vincent Peale, *The Power of Ethical Management*