



CCOC COMMUNICATOR

Update on CCOC's Mandatory Director Training Class

By Aimee Winegar

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The first law in the United States requiring that all directors of community associations take—and pass—basic training in their responsibilities goes into effect on January 1, 2016.

This law, Montgomery County Bill 45-14, was proposed by Councilmember George Leventhal last year and was unanimously approved by the County Council earlier this year. It mandates that all members of community association boards of directors who are elected, or re-elected, after January 1, 2016, must take the training within 90 days of their elections or re-elections. Ultimately, all of the approximately 5,000 association directors in Montgomery County will have to take the training.

The responsibility for designing the class was assigned to the CCOC. The CCOC has taken this responsibility seriously and has worked hard to offer a program that is both practical and useful.

The program now taking shape will include these features:

- *the training will be online
- *the training will be free
- *the training will be available to all who wish to take it
- *the training will be approximately 2-2 1/2 hours long
- *the training can be taken in steps and paused at any time
- *the training will be interactive and include short quizzes which must be passed in order to move to the next section
- *the training will be based on both Montgomery County and Maryland laws, and will include “best practices” for association management.

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CCOC ADOPTS GUIDELINES FOR AUDIO AND VISUAL RECORDING OF CCOC MEETINGS

The CCOC recently adopted guidelines for the use of recording devices at any CCOC meeting which is subject to the Maryland Open Meetings Act. The Guidelines, drafted with the aid of Associate County Attorney Walter Wilson, allow any member of the public, and any representative of the news media, to use tape recorders or video cameras at CCOC meetings, provided that such devices do not create excessive noise or (in the case of video cameras) excessively bright lights that disturb the Commissioners or other people attending the meeting. The CCOC is the first County agency to adopt written guidelines on this matter.

The CCOC chairperson is permitted to restrict the movements of any person making the recordings if that is necessary to conduct an orderly meeting.

The guidelines require any person wishing to make a recording to first notify everyone else at the meeting that a recording would be made.

The guidelines also state that privately made recordings, or transcripts of such recordings, will not be part of the official records of the meeting.

These guidelines only apply to those meetings which are regulated by the Maryland Open Meetings law. Therefore, they apply to the CCOC's monthly meetings but not to the meetings of its committees, nor do they apply to its dispute resolution hearings. While the public is allowed to attend CCOC committee meetings and panel hearings, it is not allowed to record them.

The Maryland Open Meetings Act is much different than the open meetings statutes found in the Condominium and Homeowners Association Acts and the Cooperative Housing Corporation Act. The Maryland Open Meetings Act applies only to government agencies and is far more detailed than are the statutes of the community association acts. In particular, the Maryland Open Meetings Act specifically allows the private recording of certain kinds of meetings, whereas the statutes regulating association meetings do not specifically allow such recordings. Associations faced with requests to record meetings should seek advice from their attorneys.

CCOC UPDATES ITS GUIDE TO ITS PROCEDURES AND DECISIONS

The 2015 edition of the *Staff's Guide to the Procedures and Decisions of the CCOC* is now available online at the CCOC website. In addition to the *Guide* itself, the new decisions it incorporates are also posted on the website.

Printed copies of the 115-page *Guide* are available for \$15.00. Requests for printed copies can be made by writing or emailing the CCOC. (Checks should be made out to "Montgomery County, MD.")

The purpose of the *Guide* is to provide easy access to all formal CCOC rulings, as well as to explain how the CCOC's hearing panels make their decisions. For example, anyone wishing to know how the CCOC has ruled on basketball courts or association elections can readily find this information. Similarly, the *Guide* includes summaries of the most important rulings of the Maryland courts on community association issues and an index to the relevant laws.



Update on CCOC's Mandatory Training Class

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*The class can be downloaded for use by third-parties such as attorneys and PCAM managers in their own presentations.

*The text of the online class will be available for downloading and printing for those who would like to be able to refer back to its contents.

The law allows the CCOC to approve training classes offered by other organizations, provided that the classes meet the CCOC's standards. Such classes could be offered by private bodies such as management firms, law offices, or the Community Associations Institute (CAI) who would be allowed to charge fees for their classes. The CCOC is in the process of developing minimum standards for such classes and for those who will teach them. Among the standards under consideration are requirements that the teachers be either lawyers experienced in community association law or property managers certified by the CAI, and that those taking the classes must pass tests in order to obtain their certificates of training.

An important feature of the new law is that all associations must report to the CCOC who their directors are, when the directors were elected or reelected, and which directors have taken the training. The CCOC hopes that associations, their managers and attorneys, will cooperate with us to help us obtain the fullest possible compliance.

It should be noted here that the law clearly states that a director's failure to take the training will not invalidate that director's votes as a member of a board, nor will it affect the validity of the board's decisions. Important as the need for training is, the CCOC does not want to penalize the entire association for the misconduct of one of its members.

In order to simplify associations' compliance with this reporting task, CCOC expects to use the current Profile Update forms annually sent out by the Licensing & Registration Office of the Department of Housing and Community Affairs. It is now working with that Office to revise the forms and to balance the need to report new information by removing questions that are no longer useful.

The CCOC has completed the text of the training program. It is now in the hands of the County's Department of Technology Services (DTS) for transformation into an online product. We hope to have a sample available for beta testing later this year and the final product up and running before the end of the year.

To give you an idea of how the training will look, a verbatim section of the class is included in this issue.

Implementation of the law, including the monitoring of compliance and suitable recordkeeping, is the responsibility of the Office of Consumer Protection.

In conclusion the law, when first proposed, was highly controversial. Although no one questioned the need for training of directors, there was great concern that such a requirement might discourage association members from volunteering to serve on their boards. The CCOC is deeply concerned about this too, and it has strived to create a class that will be both useful and easy to use. The CCOC respects and admires the many thousands of County citizens who do volunteer to serve their associations and it is confident that they are committed to performing their duties as well as possible and will see the benefits that the training has to offer them and their communities.

Community associations are a continually growing proportion of all County homes, and over 134,000 homes in the County now belong to such associations. They are increasingly important to the well being of the County itself as well as to their residents. We cannot let them fail. Knowledgeable directors will help to ensure their continued success.

(Aimee Winegar, CMCA, LSM, PCAM, is the Vice-Chairperson of the CCOC and works as a large-scale manager for Community Association Services, Inc.)

Sample of the Draft CCOC Director Training Class

By Aimee Winegar, Commissioner

SECTION 2: ETHICS

Associations rely on the services of volunteers to sit on the board and to make its decisions. If an association is to survive as a viable economic and social entity, board members must serve ethically and in good faith. From a legal perspective, this means that each director's decisions must be made in the best interests of the association, which sometimes means placing personal feelings and interests aside. Board members must be honest and diligent in all their actions. Those who handle money or property for others have a fiduciary duty. Board members are fiduciaries in their relationships to their association.



FIDUCIARY DUTY

"Fiduciary duty" means the highest standard of ethical behavior and trust. Board members must be honest in all their dealings with the association and hold the best interest of the association higher than their own personal benefit.

The fiduciary duties of the board's members include:

- *Avoiding conflicts of interest and disclosing any conflicts that might exist.
- *Acting in the interest of the association rather than their own private interests.
- *Making a genuine effort to be well-informed on the business coming to the board.
- *Giving oversight to assure that all association business is transacted legally.
- *Protecting the association's assets.

CONFIDENTIALITY

As a member of your board, you will probably see and learn personal information about other residents. This is especially true when dealing with covenant violations and overdue assessment payments. You must treat such information confidentially. You may not discuss information learned at closed board meetings outside of the meeting, even with other board members.



(Real Life Example: During a closed session, Maria learns that her neighbor George is not paying his assessments. She immediately calls him to find out why he is behind on paying. WHOOPS! THE INFORMATION OBTAINED IN A CLOSED MEETING SHOULD NOT BE DISCUSSED OUTSIDE THAT MEETING.)

Draft CCOC Training Class Sample

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MEETING ATTENDANCE

Membership on the board carries the commitment to serve and to attend board meetings. If you don't regularly attend the meetings, the board's ability to function may be affected. For a board meeting to be legal, there must be a quorum. A quorum is the minimum number of the voting members who must be present in order for the board to conduct business. Board members might also be assigned certain tasks, and if you do not regularly attend to accept assignments or report on your actions, the board might not perform efficiently. If you are not able to attend regularly, please reconsider your desire to sit on the board.

REAL LIFE EXAMPLE: Every board member is important. And every board meeting is important! Many issues faced by a board persist for months and sometimes years. It is important to attend the meetings so that you don't miss valuable information and discussion, even if you feel you don't have much to add. If board members do not attend regularly, they might prevent the board from being able to act for lack of a quorum.



LOOKING AT THE "BIG PICTURE"

Unless specifically authorized or designated, members of the board are considered to be representatives of the entire association and not of a particular neighborhood, street or building. Board members are obligated to focus on the needs of the association as a whole.

This does not mean that board members cannot take strong positions on certain subjects. But they must be aware of the duty to consider the perspectives of all community members, and not just of their own neighborhood or home.

REAL LIFE EXAMPLE: Carl joined the board because he is concerned about the landscaping of his entire community, not just on his street. **RIGHT! CARL MUST LOOK AT THE IMPACT OF THE BOARD'S DECISIONS ON THE ENTIRE ASSOCIATION, NOT JUST ON THE AREAS THAT HE DRIVES BY EVERY DAY.**

CONFLICTS OF INTEREST

A potential or real conflict of interest exists any time a board member is in a position to place one person's needs or preferences (including his own) above those of another when that can work to the disadvantage of the other. Here are some examples:

*A contractor offers to do special work for a director if he receives a contract with the association.

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Draft CCOC Training Class Sample

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*A contractor provides gifts to the board or the manager.

*A director grants special treatment to a friend in paying dues, in obtaining extra services or in complying with association rules.

Potential and real conflicts of interest lurk near every board decision. Maryland corporate law allows a director to vote on an issue in which he has a possible conflict of interest only if he discloses that conflict to the rest of the board, and if his vote is not the deciding vote. However, best practices recommend that:

*directors make full disclosure of factors affecting their impartiality. Any time an issue affects a family member or friend, or there is an offer of special treatment, the director should immediately report this to the full board, and

*the board member involved should recuse himself from any vote that might involve a conflict of interest.

Recognizing what is—and what is not—a conflict of interest can be difficult. When in doubt, consult an attorney. One way to avoid being accused of a conflict of interest is always to be open and transparent when conducting the board's business. The best protection is a commitment to establishing and following written procedures for bidding and awarding contracts, for enforcing rules, for paying bills, and for deciding priorities in expenses.

REAL LIFE EXAMPLE: Steve is the president of his HOA and he wishes to install a screened room on his deck. Steve knows that the HOA's rules require the HOA to act on his application within 45 days or it's deemed approved, but he also suspects that none of the other board members know of the rule. Steve submits his application for the screened room and does not inform the rest of the board about the deadline. When the board misses the deadline, Steve constructs the enclosure. Has he acted within his rights? **NO. AS A BOARD MEMBER, STEVE CANNOT INTENTIONALLY ALLOW HIS ASSOCIATION TO MAKE A MISTAKE FOR HIS OWN BENEFIT.**

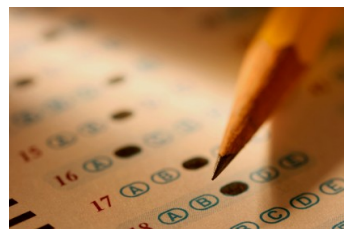


REAL LIFE EXAMPLE: Sally, a director, is unhappy and wants to change managers. One management firm being considered employs a friend of Sally's, but her friend would not be the manager. **SOME TIMES, IT'S HARD TO DETERMINE IF THERE IS A CONFLICT OF INTEREST. TO AVOID A CONFLICT, SALLY SHOULD DISCLOSE THAT SHE IS A FRIEND OF THE EMPLOYEE. SALLY CAN CHOOSE NOT TO VOTE, OR THE BOARD MIGHT DECIDE THAT THERE IS NO CONFLICT.**

CHECK FOR UNDERSTANDING

1. Which of the following duties must board members practice in order to demonstrate ethical behavior?

- A. fiduciary duty
- B. duty to negotiate
- C. duty to cooperate
- D. duty to obligate funds



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Draft CCOC Training Class Sample

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2. True or false: following procedures consistently is an element of ethical behavior.
3. True or false: board members can freely discuss among themselves any personal information that they learn about their neighbors through the board's business.
4. True or false: as long as a board member focuses on the big picture when he votes, he does not need to disclose a potential conflict of interest.
5. Yes or no: Is there a potential conflict of interest when a contractor offers to provide gift cards to any or all of the directors for a community event if his bid is accepted?

ANSWERS:

1. **Correct answer: a. fiduciary duty.** Correct answers receive this reply: "The relationship of trust placed on board members is "Fiduciary duty."
2. **True.** Correct answers receive this reply: "Consistent, objective procedures protect the board from accusations of unethical or discriminatory behavior."
3. **False.** Correct answers receive this reply: "Board members should treat personal information as confidential."
4. **False.** Correct answers receive this reply: "All conflicts of interest should be disclosed, whether or not they receive a vote."
5. **Yes.** Correct answers receive this reply: "Any time a board member might benefit personally as a result of his position on the board, a potential conflict of interest exists."

[A note on the quizzes: A person who gives the wrong answer to a question will be told the answer is incorrect and will be instructed to answer again. When the person does select the correct answer, he will receive the appropriate message confirming that the answer is correct. He cannot proceed to the next section until he correctly answers all questions.]

Advice on Hiring Tree Care Experts

The proper care of its trees is an important part of most association landscaping budgets. CCOC recommends that associations do business only with tree experts licensed by the Maryland Department of Natural Resources. Those wishing to be licensed must demonstrate relevant training and experience and carry liability and property damage insurance. A tree expert is any person who diagnoses or supervises tree care, or who trims, prunes, thins, cables, shapes or removes the crown of a tree that is more than 20 feet tall. (Persons who treat or remove trees less than 20 feet tall do not need licenses.) For more information, visit www.dnr.maryland.gov/forests

Mark Fine, Don Weinstein Join CCOC

The CCOC is happy to welcome new commissioners Mark Fine and Don Weinstein as resident representatives to the CCOC. They replace former CCOC chairperson Elizabeth Molloy, and Elayne Kabakoff.

Mr. Fine is the chairman of the Charles County Homeowners Dispute Resolution Board, a resident of Montgomery County and president of the Fairland Estates Civic Association. He is also the president of Joshua Systems, Inc. which specializes in alcohol awareness training.

Mr. Weinstein is a former president of the Decoverly I HOA in Rockville and a former lecturer in economics, management, organizational behavior and global business strategies at the Maryland and Northern Virginia campuses of the University of Phoenix.

One professional representative position on the CCOC is vacant.

If you wish to serve on the CCOC, please sign up for its free “eSubscribe” email list. Near the end of every year, the Office of the County Executive will publish an announcement seeking applicants for upcoming vacancies on the CCOC. Appointees serve for 3 years and can serve up to two full terms.

CITY OF ROCKVILLE REJOINS THE CCOC

The CCOC is also proud to announce that the City Council of Rockville voted unanimously to opt back Chapter 10B of the Montgomery County Code, “Common Ownership Communities.”

Several cities and towns in the County, such as Rockville and Gaithersburg, are independent of the County, and can select which County laws they wish to have apply within their borders. The City of Rockville had first voted to opt into Chapter 10B in 2010, but did so with a 5-year “sunset” provision, and its law automatically expired in January, 2015. The new law has no expiration date. (The City of Gaithersburg and several small towns and villages have not opted to apply Chapter 10B, and the CCOC cannot serve the citizens of those municipalities.)

The CCOC welcomes the residents of Rockville and looks forward to serving them.





Members and Staff of the CCOC

(As of September 21, 2015)

Residents

Rand Fishbein, Ph.D.-Chairperson
 Jim Coyle
 Marietta Ethier, Esq.
 Mark Fine
 Bruce Fonoroff
 David Weinstein
 Don Weinstein
 Ken Zajic

Professionals

Aimee Winegar, Vice Chairperson
 Richard Brandes
 Terry Cromwell
 Eugenia Mays
 Gianna Rahmani
 Tom Stone, Esq.
 (one position vacant)

Office of the County Attorney

Walter Wilson, Esq., Associate County Attorney

Volunteer Panel Chairs

Mitchell Alkon, Esq.
 Bruce Birchman, Esq.
 Rachel Browder, Esq.
 Ursula Burgess, Esq.
 Julie Dymowski, Esq.
 Charles Fleischer, Esq.
 Greg Friedman, Esq.
 Christopher Hitchens, Esq.
 Jennifer Jackman, Esq.
 Kevin Kernan, Esq.
 John McCabe, Esq.
 Nicole Williams, Esq.
 Corinne Rosen, Esq.
 John Sample, Esq.
 Douglas Shontz, Esq.
 Dinah Stevens, Esq.

Staff

Peter Drymalski, Investigator & deputy assistant newsletter editor

Useful County Contact Information

Most Montgomery County agencies can now be reached by dialing “311” during ordinary business hours. The operator will then refer the call to the proper agency. This includes non-emergency Police services, Libraries, Courts, and other departments. City of Rockville residents should call their City agencies directly.

Some County agencies may be called either through 311 or directly, including:

Consumer Protection	240-777-3636 (email: www.montgomerycountymd.gov)
County Council	240-777-7900
Maryland-National Capital Parks and Planning	
Planning Board	301495-4605
Parks Headquarters	301-495-2595
Emergency Services	911

Given the small size of the CCOC’s own staff, we request you contact us by email only:

ccoc@montgomerycountymd.gov

This side for mailing.

District Court Judges' Seminar on Association Collections Now Online at CCOC Website

In one of this year's most popular community association events, well over 100 people, including many lawyers, attended an evening seminar on legal issues involving assessment collections, presented by Judges Patricia Mitchell, Gary Everngam and Eugene Wolfe of the District Court.

Judges Mitchell and Wolfe reviewed the general procedures for debt collections in the District Court, emphasizing the need for associations to prove that they are entitled to a judgment based on good facts and on the law.

Judge Everngam elaborated on those general comments. He said that while the judges understand the duties of associations to maintain their common areas and pay their bills, they also know that many homeowners can't pay and can't afford lawyers. Therefore the judges review the cases carefully to ensure that the associations produce the necessary information in detail. This information should include clear documentation of the debt and an explanation of all charges added to the account since the last time the account had a zero balance. Each charge to the account must be supported by reference to the specific section of the governing documents authorizing the charge, and the reference should be backed up by copies of those sections. He also advised associations to avoid mixing "hard" charges like assessments, late fees and interest, which are specifically regulated by the laws or documents, with "soft" charges such as attorney fees and other "costs of collection" which are not specified in detail in the law or relevant documents and vary from case to case. Judges are more likely to grant "hard" charges and to scrutinize "soft" charges much more strictly.

For those who wish to learn more, the slides from this seminar are now online at the CCOC's website, and the CCOC appreciates the judges' permission to make them available to all.