



New Hampshire REALTORS® Leadership Conference

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Fundamentals of Association Governance

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NATIONAL
ASSOCIATION of
REALTORS®

REALTORS®
Conference & Expo

Global Reach. Local Focus.

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Governing Documents

Articles of Incorporation

A public document that legally establishes the organization

Agreement between state and organization

Constitution and Bylaws

Internal document(s) that governs organization's operations

Agreement between organization and members

Policies

Standard operating procedures that are adopted and amended by the BOD

Agreement between BOD and staff

What's What and How?

1

Constitution vs. Bylaws

- ❑ Both govern organization's internal affairs
- ❑ Courts consider these documents essentially the same
- ❑ Per Robert's Rules, constitution prevails if conflict

2

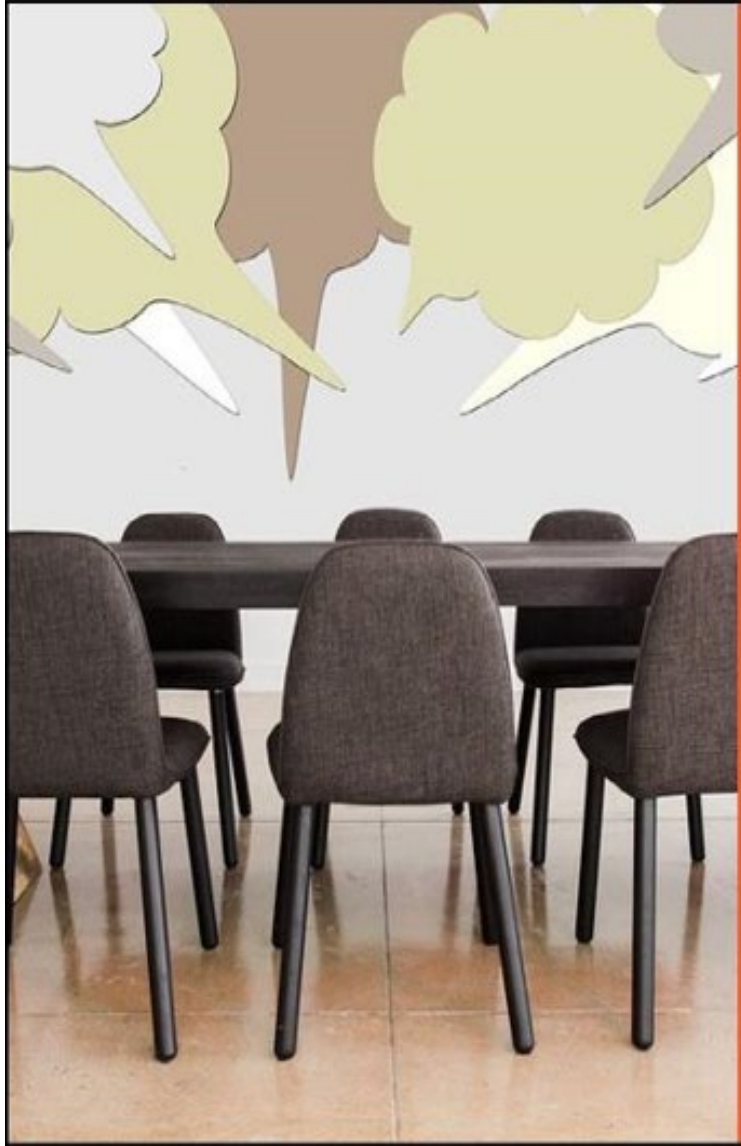
Bylaws vs. Policies

- ❑ Bylaws are appropriate for items that are less likely to change
- ❑ Policies are appropriate for items that may frequently change or requires discretion

3

NAR Bylaws Certification Process

- ❑ Streamlined process for verification of bylaws compliance
- ❑ Online certification form can be found here:
<https://www.nar.realtor/BylCompCert.nsf/mainmenu>



Board of Directors

- ❑ Ultimate authority - over internal affairs of organization and management and use of its assets
- ❑ Provide strategic leadership
- ❑ Must act consistently and in accordance with Articles of Incorporation, bylaws and policies

BOD Fiduciary Duties

Duty of Care

Duty of
Obedience

Duty of
Accounting

Duty of
Loyalty

Duty of
Confidentiality



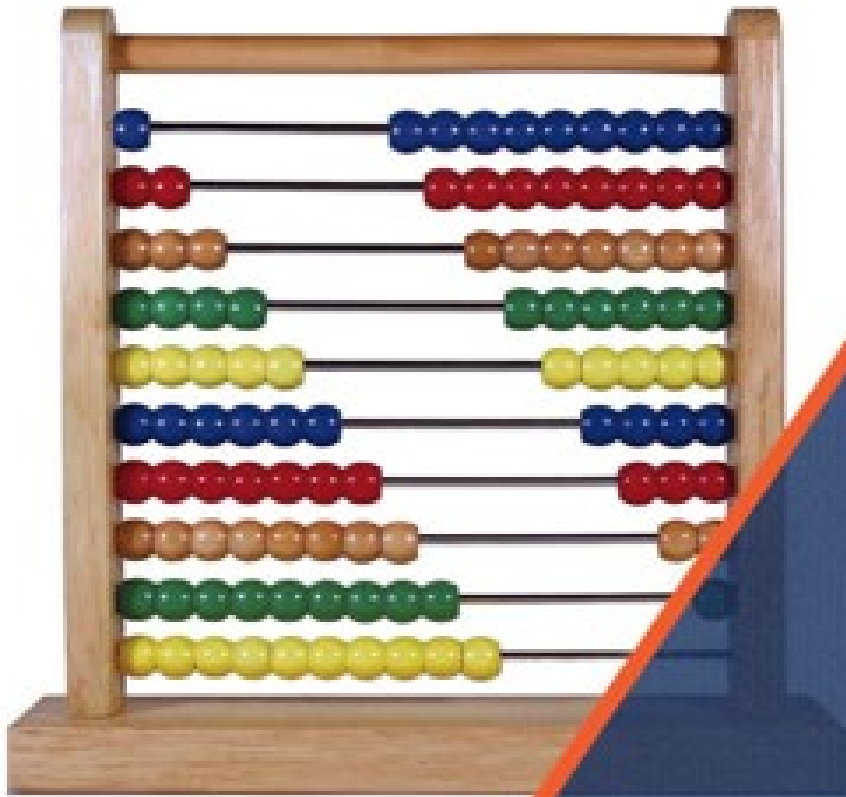
Duty of Care

- Exhibit honesty and act in good faith
 - Exercise ordinary and reasonable care in delegation of duties
 - Attend meetings and stay informed of all material information that's reasonably available



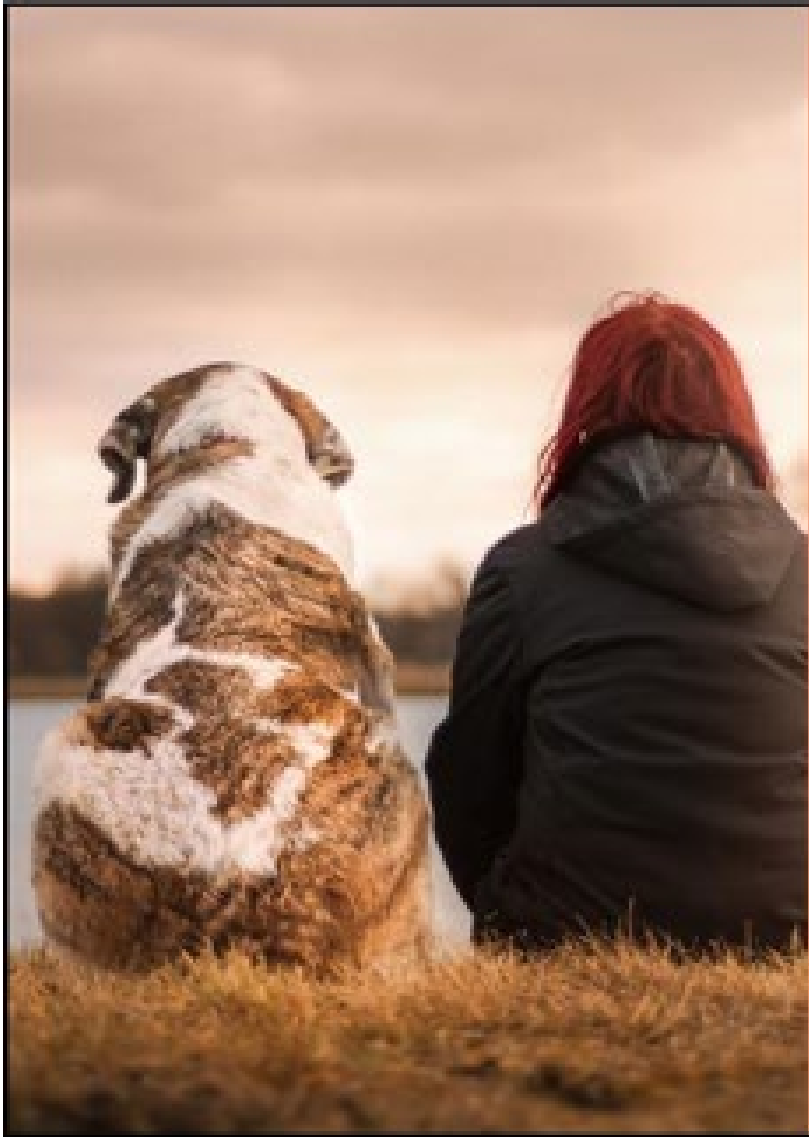
Duty of Obedience

Act in accordance with, and in furtherance of, the association's mission and governing documents, as well as applicable laws and regulations.



Duty of Accounting

Safeguard, protect, and preserve association assets by adopting, and following, proper accounting procedures and controls



Duty of Loyalty

Undivided allegiance and duty of faithfulness to the association.

- Directors must act in good faith for the benefit of the organization and not for the director's own personal interest.

Conflict of Interest



Avoid
Disclose
Resolve
Recuse

Review COI policy at the beginning of each BOD meeting

Examples:

Transaction with a family member

Corporate opportunities
Competing organizations

Duty of Confidentiality

- Duty to keep confidential personal information learned in your capacity as a Director.
- Duty to keep confidential information that would be value to a party adverse to NHAR if shared.
- Duty to keep confidential what is said and positions taken during Board discussions.

Sexual Harassment

Why is this Important?



Employee Morale



**Avoid Negative
Publicity**



Productivity



Liability

What is Harassment?

Unwelcome verbal, visual or physical conduct based on a person's "protected class" (e.g. race, color, religion, sex, national origin, etc.).



Examples of Harassment

- ✓ Unwelcome contact
- ✓ Sexual advances
- ✓ Slurs, jokes, innuendos
- ✓ Inappropriate gestures

Sexual Harassment

Would a "reasonable person" in the alleged victim's circumstances find the comment or conduct unwelcome so as to create a hostile work environment?

Association Liability

Association must exercise reasonable care to prevent and promptly correct harassment.

Liable if association knew or should have known and failed to take immediate and appropriate action.

Anti-Harassment Policy

1

Create

Who, what,
where, when.



2

Circulate

Create awareness
of the policy.



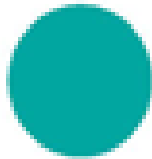
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Train

Conduct regular
training.



Investigating Complaints



Prompt

Conduct and conclude investigations promptly.



Impartial

Conduct without prejudice towards the reporting party.



Corrective Action

Determine on a case-by-case basis.



Notification

Inform reporting party and the accused of the investigation's conclusion.

NHAR's Harassment Policy

3. Harassment and Discrimination Policy

OBJECTIVES AND PHILOSOPHY

It is the objective and philosophy of NHAR to

- Provide employees with a working environment as free as possible from unlawful harassment, including sexual harassment, and discrimination;
- Prevent harassment of and discrimination against employees by co-workers, management, vendors, contractors, association members, and the general public;
- Prevent retaliation against any employee;
- Encourage prompt reporting of complaints of harassment, discrimination, and retaliation through the reporting procedures set forth below; and
- Resolve complaints promptly and discretely.

POLICY

NHAR will not tolerate any form of harassment of any employee, visitor, customer, or other individual on the basis of race, color, religion, marital status, pregnancy, sexual orientation, national origin, age, physical/mental disability, military or veteran status, sex or any other unlawful basis. Harassment refers to conduct or behavior which is personally offensive or threatening, impairs morale, or interferes with the work effectiveness of employees and is based any of the above-listed protected characteristics. Examples of harassment include, but are not limited to, conduct or comments that threaten physical violence, offensive, unsolicited remarks; unwelcome gestures or physical contact; display or circulation of written materials, items or pictures, that are degrading to individuals or groups based upon the characteristics listed above, and verbal abuse or insults about or directed at any employee or group of employees because of any of the above listed characteristics.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal, physical and non-physical conduct of a sexual nature when:

1. submission to such conduct is made explicitly or implicitly a term or condition of employment;
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual, or for awarding or withholding favorable employment opportunity, evaluation or assistance; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's performance at work, or creates an intimidating, hostile or offensive environment in which to work.

Sexual harassment includes a wide range of behaviors including but not limited to: the actual coercion of sexual relations; unwelcome sexual advances, whether or not they involve physical touching; sexual epithets, offensive comments, jokes, innuendo and other sexually oriented statements and unwelcome emphasizing of sexual identity; displaying, viewing, or sending sexually suggestive objects, pictures, cartoons, email

messages, Internet websites, text messages, etc.; unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments; and, inquiries into an individual's sexual experiences. Sexual harassment may be indirect and even unintentional.

This policy prohibits all of the aforementioned activities whether engaged in by a director, officer, manager, supervisor, employee, or agent of NHAR, co-worker or non-employee who is on NHAR premises or who comes in contact with NHAR employees.

REPORTING PROCEDURE

Experience has shown that a clear statement to the person engaging in the offensive behavior is often all that is necessary to stop the conduct. Employees who believe they are being harassed or discriminated against are encouraged to let the person engaging in the conduct know how they feel, but they are not required to do so.

An individual who believes that he/she has been subjected to unlawful harassment or discrimination is required to report the incident to the EVP. However, if one is not comfortable bringing the complaint to NHAR's Executive Vice President, the employee is encouraged to speak with the Assistant Executive Vice President or any one of the NHAR Executive Officers including the NHAR President, NHAR President-Elect, NHAR Treasurer, or NHAR Immediate Past President. The matter will be promptly investigated and appropriate action will be taken, according to the availability of relevant facts, the nature of the misconduct, and the severity of its impact on the persons affected. Employees must follow this procedure if they feel that they are being subjected to harassment or discrimination. NHAR cannot take action to stop it, if it does not know about the harassment or discrimination.

Any employee who harasses or discriminates against another employee or a customer or any other individual with whom the employee has contact as part of his or her work for NHAR on any of the bases discussed above will be subject to disciplinary action, up to and including termination of employment.

NO RETALIATION

Retaliation against an employee who complains about, opposes or participates in an investigation of, sexual and other unlawful harassment and/or discrimination is a violation of NHAR's policy and state and federal law. Retaliation means any form of adverse action against an employee by a manager or co-employee because he or she made a report of alleged harassment or discrimination; testified against or participated in any manner in an investigation of a report of harassment; or opposed any practice prohibited by this Policy or that is unlawful. Retaliation is a form of unlawful harassment and will be handled in the same manner as other forms of harassment.

At all times, NHAR's Harassment and Discrimination Policy is intended to fully comport with all provisions of applicable state and federal law. Accordingly, NHAR and its employees shall adhere to any changes in federal or state law, regardless of whether reflected in the above-stated policy.