



E-Mail Addresses and Board Member E-mails

WHO IS ENTITLED TO THEM, AND DO BOARD MEMBER E-MAILS CONSTITUTE A MEETING?



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Who is entitled to the e-mail addresses of your association's members? Are e-mails sent between board members part of an association's official records? What about e-mails sent by a board member to the manager?

Only the e-mail addresses of unit owners who have either consented to receive association notice(s) by e-mail or have consented in writing to the disclosure of their e-mail addresses are subject to review during an official record inspection. The Condominium Act, more specifically, Section 718.111(12), Florida Statutes, provides, with

regard to unit owner e-mail addresses, that “[t]he association shall also maintain the electronic mailing addresses ...of unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses...are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with [this subsection].” This topic was discussed in *Cohen v. Harbour House (Bal Harbour) Condominium Association, Inc.*, Arb. Case No. 2012-02-3139 (Summary Final Order / Lang/June 29, 2012).

In the Cohen case, a unit owner requested a list of all of the e-mail addresses of the members, but did not, however, receive such a list. The unit owner alleged that she was improperly denied the e-mail addresses. However, it was discovered that the association did not have consent from any members to use their e-mail for the purposes of receiving official notices nor did the association have written consent to disclose the protected information from any member. Therefore, the arbitrator held that “[b]ecause, under the statute, no unit owner has submitted his or her email address for notice requirements or consented in writing to disclosure of his or her email address, the [a]ssociation did not improperly deny access by [the unit owner] to its list of email addresses.”

In today’s instant world, e-mail allows us to express our thoughts at anytime, anywhere. It is so convenient that it is practically unavoidable for board members to

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use it to discuss association business. As the official records of condominium, homeowner, and cooperative associations are subject to member inspection with limited exception, the question often asked is whether e-mails, including e-mails between board members and between one or more board members and the association's manager, constitute part of the association's official records that are subject to inspection by the members.

Several categories of records, while still constituting a part of the official records, are not subject to a member's inspection request. For example, attorney-client privileged correspondence; medical records; information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit; and social security numbers, just to name a few, are not subject to a member's inspection request but still constitute a part of the association's official records.

On March 6, 2002, the then Chief Assistant General Counsel of the Department of Business and Professional Regulation (DBPR) issued an opinion, which provided that "[c]ondominium owners do have the right to inspect e-mail correspondences between the board of directors and the property manager as long as the correspondence is related to the operation of the association and does not fall within the... statutorily protected exceptions... [The DBPR does not have] regulations expressly requiring archiving e-mails, but... if the e-mail correspondence relates to the operation of the association property, it is required to be maintained by the association, whether on paper or electronically, under chapter 718, Florida Statutes."

In *Humphrey v. Carriage Park Condominium Association, Inc.*, Arb. Case No. 2008-04-0230 (Final Order/Campbell/March 30, 2009), an arbitrator of the Division of Florida Condominiums, Timeshares, and Mobile Homes held that "...e-mails... existing... on the personal computers of individual directors... are not official records of the association... Even if directors communicate among themselves by e-mail strings or chains, about the operation of the association, the status of the electronic communication on their personal computer would not change. Similarly, an e-mail to an individual director or to all directors as a group, addressed only to their personal computers, is not written communication to the association." The arbitrator reasoned that "[t]his must be so because there is no obligation to turn on [the] personal

computer with any regularity, or to open and read e-mails before deleting them."

Simply stated, if one was to rely on the guidance cited herein, e-mails solely between board members, even a board majority, are not part of the official records; e-mails between the board and the manager are part of the official records; and unit owner e-mail addresses are only subject to inspection where a unit owner has either consented to receive notice by e-mail or has consented in writing to the disclosure of his/her e-mail address.

As the Condominium Act defines a board meeting as any "gathering of the directors, at which a quorum of the board is present, for the purpose of conducting association business," and the Homeowners' Association Act provides that a "meeting of the Board occurs when a quorum of the Board gathers to conduct Association's business" (and similarly both Acts require 48 hours continuous notice), it is entirely possible that upon legal challenge, the arbitrator or judge may rule that e-mail communications that involve (or "gather") a majority of the board constitute a meeting for which the 48-hour meeting notice is required. So, while it's not clear whether board member to board member e-mail trigger the meeting notice requirements, it is clear that board decisions should be rendered at properly noticed board meetings, and not by e-mail. It is also clear, and environmentally friendly, too, that an association can offset its postage costs by using e-mail to communicate to its members. ■