



STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

LEGAL OPINION

TO: Robert Badger, Supervisor
Bureau of Customer Service

THROUGH: J. Sue Richardson, Chief Assistant General Counsel

FROM: Amanda Keener, Law Clerk

SUBJECT: Access to Association e-mails

DATE: March 6, 2002



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Question: The question is whether condominium owners have a right to inspect e-mail correspondences between the association board of directors and the property manager under section 718.111(12), Florida Statutes, and whether the Florida Administrative Code addresses the requirement of archiving e-mails.

Answer: Condominium 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 one of the three statutorily protected exceptions.

Analysis:

Section 718.111(12)(a)(1 5) provides that the association shall maintain all records that are related to the operation of the association, which will constitute, along with other specifically listed items, the official records of the association. Section 718.111(12)(c) states that "[t]he official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times." The statute lays out three exceptions to the access to official records by the unit owners. Those exceptions are: any documents protected by the attorney-client or work-product privilege while litigation is pending, information obtained by the association for approval of the transfer of a unit, and unit owner medical records. Fla. Stat. §718.111(12)(c).

Although there does not appear to be any case law or opinions relating to whether e-mails are official records of associations, an arbitration decision has concluded that where records are related to duties that are vested in the association, such as maintenance and repair, the records constitute official records under section 718.111(12), Florida Statutes, because they are "related to the operation of the association." Aldrich v. Tahitian Gardens

Condo. Ass'n, Inc., Arb. Case Nos. 96-0055; 96-0070, Summary Final Order (August 5, 1996). Section 718.111(3) provides that the powers of the association include maintenance, *management*, and operation of the property. Because the duty of management is vested in the association, under *Aldrich*, any records pertaining to the management of the association property constitute official records and shall be open to inspection to unit owners pursuant to section 718.111(12)(c), Florida Statutes.

We have no regulations expressly requiring archiving e-mails, but, as has been stated, 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. Whether an e-mail correspondence is an official record should be determined on a case-by-case basis by the division.

The unit owner's right of access granted by section 718.111(12) is qualified by the right of the association to adopt reasonable rules regarding the frequency, timing, location, notice and manner of records inspection and copying. Alan v. Boca Cove Home Condo. Ass'n, Arb. Case No. 92-0262, Partial Summary Final Order (March 22, 1993); Porta Bella Yacht & Tennis Club Condo. Ass'n, Inc. v. Mechler, Arb. Case No. 98-3476, Final Order Dismissing Petition (April 17, 1998). If the unit owner believes he has been denied proper access to the official records, the Division should determine what association rules are reasonable with regard to the unit owner's right of access.

This opinion is limited to the questions submitted by the unit owner. In order to address any concerns relating to communication, discussion, decision-making, board and unit owner meetings, and official records maintenance at a condominium, we would need further information from the unit owner.