

# HOA BOARD EMAIL

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LOMAA Board Meeting  
February 5, 2023

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# Recent Court Ruling

- The 4<sup>th</sup> District Court of Appeal (counties of Inyo, San Bernardino, Riverside, Orange, San Diego, and Imperial) decided in August 2022 that board members can engage in email discussions about association business outside of regular noticed meetings as long as the board does not take action on the items discussed.
- The court decided that the legislature intended a “board meeting” reflected “an in person gathering of a quorum of the directors.”
- The court also reasoned that the emails are often sent “hours or days apart from different homes or offices.” so the emails exchanges do not violate the Open Meeting Act.

# This may not be the last word

- The California Supreme Court elected not to consider the issue, for now.
- This is the first time an appellate court interpreted the meaning of “board meeting”
- Other districts are not required to follow the decision and may adopt a different interpretation.
- Differing interpretations could potentially create a conflict that would leave board members guessing as to how they should act until the matter is finally resolved by the California Supreme Court

# Intent of the Open Meeting Act

- Encourages transparency in board decision making by permitting members to witness the board conducting business.
- Board discussion of business only through emails makes a subsequent vote during an open meeting a formality.
- The emails exclude the members from the deliberations and substance and reason for the board decision and may also exclude individual board members if the email discussion did not include the full board.
- The email discussion is not part of the records of the HOA
- The only way the members can require review of the email discussion is to file a lawsuit.

# Privacy of Email Discussions

- Email, like other kinds of written communication, unlike oral remarks made during board meetings, can be archived and retrieved and should be considered a permanent record of what someone says.
- Board member emails are not privileged unless legal council is involved and only if the communication is to further the objectives of the attorney-client relationship.
- Directors may respond in the moment without considering the implication of their statements.
- If email content becomes evidence in a lawsuit, the content can be rambling and morph from one topic to another and may be taken out of context.

# Proceed with Caution

- Consider how your membership will perceive the board, issues of transparency and how the HOA is governed.
- Have the association set up dedicated email accounts for their board members. This prevents personal emails from being subject of any discovery request or subpoena.
- While the law permits email discussion of board business, board members should exercise caution and discuss the issues above with legal council to decide whether to engage in this practice,

# Virtual Board Meetings

- AB 648 expands the meaning of a Board Meeting (§4090)
- Before, the meaning of a board meeting was, a congregation, at the same time and place, of a sufficient number of directors to establish a quorum of the board, to hear, discuss, or deliberate upon any item of business that is within the authority of the board.
- Now, a teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both is an alternative meaning.
- There are several conditions which have to be met for virtual meetings.