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CONDOMINIUM BOARD MEMBER EMAILS TO PRIVATE EMAIL ACCOUNTS MAY BE OFFICIAL RECORDS

By: **Christina Harris Schwinn, Esq.**

On January 12, 2022, the State of Florida’s Department of Business and Professional Regulation’s Division of Florida Condominiums, Timeshares and Mobile Homes (“Division”) issued a final order granting a Petition for Declaratory Statement (“DS”) addressing whether emails between condominium board member’s private email accounts are “official records” under § 718.111(12), *Fla. Stat.*¹

Why would a board member of a condominium care about this DS?

Put simply, emails that you send from your personal email account in your capacity as a board member of your condominium association could be deemed an “official record” of your condominium association under § 718.111(12), *Fla. Stat.* and be accessible by a member of your condominium association pursuant to a request to access official records regardless of the fact that you sent the email from your private email account.

Unfortunately, the Division was indirect in its ruling. Rather than expressly finding that board member emails from personal email accounts to another board member’s personal email account discussing association business are in fact “official records” of the association, the Division found that there is no express exclusion under § 718.111(12), *Fla. Stat.* to exclude emails from private email accounts. As a result, the Division created an ambiguity that may lead to future litigation over the issue. Regardless of whether emails from one board member’s personal email account to another board member’s personal account discussing association business constitute an “official record” of their condominium association, board members should use caution and pay attention to what they are putting in writing to other board members as any such emails could be discoverable in litigation under Florida’s Rules of Civil Procedure or admissible in an arbitration proceeding regardless of whether the emails are “official records”. As you write those emails to fellow board members, keep the following in mind:

- 1) Would you want your email published in your local newspaper?

¹ *In re Petition for Declaratory Statement, James Hanseman, Petitioner*, Docket No. 2021-012740, DS 2021-014 (January 12, 2022).

- 2) Would you want someone to blast your email on social media?
- 3) Would you want to be sued for defamation?

If the answer to any of the above questions is no, do not put it in writing. Remember that delete does not mean delete and that once you hit the send button you have lost control of where the communication could ultimately be sent. Lastly, keep in mind the old adage: “You are never punished for your thoughts, only for your utterances.”

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

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