

# *Colorado* Homeowners Association *Law*

## **Board Disputes: If You Won't Say It in Person, Don't Say It by E-mail**

By Suzanne M. Leff on February 12, 2008

Technology expedites the work of community association board members, managers, and attorneys. Technology allows us to fully consider detailed documents before convening for in-person meetings and, in some circumstances, to request board decisions in lieu of meetings. With a few clicks, we can send project bids, opinion letters, and summaries of accounts by e-mail, and post important announcements on association websites. For these and other purposes, technology can positively serve your community associations. But community association leaders must tread carefully when using technology, particularly e-mail, for association business. Board members must keep in mind their **fiduciary duties** to their community associations **before hitting “send”** to avoid getting themselves and their associations into heated disputes and potential legal binds.

Occasionally, community association board members contact us for help with acrimonious e-mail exchanges between board members. Sometimes we learn about the acrimony because a board member decides to include one of our attorneys on the recipient list for a string of e-mail exchanges gone awry. These types of exchanges inevitably include some or all of the following

traits:

- Personal attacks on other board members
- Exclusion of certain board members from the recipient list to allow “secret” conversations about those not included
- Capitalized words, phrases, or sentences symbolizing anger and emphasis
- Rehashing of past, presumably resolved, issues
- Board members who express their desire to resign from the board
- Harsh words, hurt feelings, and attempts at consolation
- Non-board members included on the recipient list to back-up accusations, verify comments, or simply as a means of disseminating the board discord throughout the community

Board conflict requires quick attention. In general, we recommend some combination of the following steps for curtailing e-mail exchanges that have spiraled out of control:

**Stop the e-mail exchanges immediately.** The association president should instruct all board members to cease e-mail communication. If any board member continues to communicate by e-mail, that member should know that no one will respond.

**Schedule a meeting of the board.** The board should meet to discuss the issues giving rise to the acrimonious e-mail exchange. E-mail allows individuals to communicate quickly without having to speak directly with the recipients. Because e-mail exchanges do not happen face-to-face, people may feel more comfortable making accusations or using harsh words. **Tone and other conversational nuances do not translate well over e-mail**, sometimes leading to misinterpretation of the writer’s intent. Meeting in person may constrain some of the volatility

and allow the board to focus on the real business of the association.

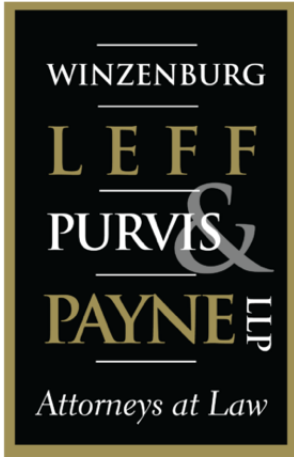
**Invite the association's attorney to the next board meeting.** The association's attorney can stress board members' fiduciary duties and highlight potential liabilities for conducting business inappropriately. The attorney's presence may also allow the board to meet in a closed, executive session, which can permit the board to resolve the conflict without other community members present.

**Identify the underlying issues and address them as necessary.** Community association board members need not resolve all personal differences. Board members should bring their unique perspectives and opinions to the board room, but those perspectives and opinions should not devolve into personal attacks on other board members. If personalities, past issues, or other situations prevent the board from conducting business, then the board members should individually consider whether they can uphold their duties to the association; if not, they may need to resign from the board. In other cases, an outside facilitator may help the board to work through resolvable issues. Or, the community association members may vote for new directors at the annual meeting or remove an errant board, or select board members, in accordance with the bylaws (and, hopefully, with attorney assistance).

**Develop a policy concerning the use of e-mail for association business.** Boards can best prevent the nasty e-mail situation from ever occurring by proactively adopting an e-mail policy for their associations. Community associations stand to benefit from all board members knowing the appropriate uses for e-mail.

If you serve on a community association board in Colorado and desire an e-mail policy for your association, contact us for a quote to prepare a policy that fits your association's needs.

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