

EMAIL MEETINGS

Email Meetings Disallowed. Starting January 1, 2012, boards of directors "shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail" except for emergencies. (Civ. Code §4910(b).) A "meeting" is defined as:

A congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business that is within the authority of the board. (Civ. Code §4090(a).)

An "item of business" is defined to mean:

any action within the authority of the board, except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a majority of the directors. (Civ. Code §4155.)

Summary. Except for emergencies (described below), a majority of directors may not use email to discuss, deliberate and make decisions on HOA business items.

Allowable Email. Boards of directors are allowed to exchange emails under the following conditions:

1. **Emergency Exception.** "Electronic transmissions may be used as a method of conducting an **emergency meeting** if all members of the board, individually or collectively, consent in writing to that action . . ." (Civ. Code §4910(b)(2).)
2. **Minority of Directors.** Fewer than a majority of directors may discuss or comment on an item of business so long as the email exchange does not become a "series" of emails involving a majority of the board. (Civ. Code §4910(b).)
3. **Non-Business.** A majority of directors may send and receive emails between themselves if it does not involve board business as defined above. Following are examples of allowable email exchanges:
 - i. setting dates and times for meetings,
 - ii. distributing information for meetings,
 - iii. requesting that items be placed on the agenda (prune trees, repair streets, create committees, paint buildings, repair roofs, etc.), and
 - iv. informational emails (informing directors of educational events, reporting the status of fence repairs, distributing interim financial statements, etc).

Delegated Authority. Administrative and oversight tasks can still be handled via emails if **delegated** to a person or persons such as the president and/or manager or a committee. Once delegated, the president and manager can make decisions and retain the right of email consultation with directors. Delegated

business is specifically exempted:

except those actions that the board has validly delegated to any other person or persons, managing agent, officer of the association, or committee of the board comprising less than a majority of the directors. (**Civ. Code 54155**)

If the president has the authority to make decisions, he/she can ask for input from other directors before doing so without violating the Open Meeting Act. If a board is worried about delegating too much authority to the president, they can form an **Executive Committee** with two or more directors, but less than the entire board, to handle issues between board meetings.

Email Is Discoverable. Email between directors is discoverable in litigation. Unless the emails are **attorney-client privileged** communications, such emails can be projected onto screens and read to juries in open court. **Cc-ing legal counsel on board communications does not protect them from discovery.** A communication is privileged only if the dominant purpose of the communication is to further the objectives of the attorney-client relationship. *2,202 Ranch LLC v. Superior Court* (2003) 113 Cal. App. 4th 1377, 1390. Following are examples of email communications on behalf of the association which are privileged (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal. 4th 725):

- Email from attorney to director or manager for the purpose of communicating legal advice,
- Email from director or manager to attorney seeking legal advice,
- Email between director and manager communicating legal advice received from attorney, and
- Email between director and manager with attorney cc'd communicating legal advice.

SUMMARY: To address issues between regularly scheduled board meetings, directors may do the following:

1. Delegate authority to the president and/or manager,
2. Call a **special meeting** with 4-days notice,
3. Call an emergency meeting attended in person or via teleconference,
4. Address emergency issues via email or circulate a unanimous written consent, or
5. Call an executive session meeting for executive session issues.

Recommendation: Association should set up **dedicated email accounts** for board members.

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