

Association Records: Are emails and electronic documents Association records?

Associations and managers are increasingly using email and electronic storage and often have accounting software and databases that contain information specific to Associations. Additionally, Associations and managers are increasingly relying on email to communicate and distribute information. The question is: how many of these are “association records” that owners have a right to review?

Associations are required to keep official records. Condo Associations are required to keep governing documents, meeting minutes, budgets, and financial records.¹ Old Act Condo Associations must also keep “complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities.”² HOAs are required to keep “financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status.”³

The statutory description of association records is very broad and has the potential to be interpreted as anything related to association business, including email, etc.

Washington law does not yet specifically address whether emails or other electronic records regarding association business are association records.⁴

Our law firm takes the position that emails are not association records because Boards can only take action in Board meetings, and the minutes of those meetings are the official “record” of the association. No emails or other discussions about decisions would change that.

Our firm also takes the position that electronically stored information which would otherwise be considered association records, are association records if the information that is electronically stored consists of Board meeting minutes, the association's budget(s), or other relevant association financial records. Since associations are required to make the above information reasonably available to owners upon request⁵, electronically stored versions of the above may be considered association records. Certainly printed copies of these documents would be association records.

The statutes are silent as to the form in which association records must be made available to owners. Traditionally, physical copies are made available, but because associations and management companies tend to store information electronically, electronic copies may be an acceptable substitute (there is no Washington law that supports or refutes this).

Other states allow associations to provide owners with electronic copies of association records⁶ and in 2013, the HOA Act was updated to allow HOAs to inform owners of association meetings via email,⁷ so it appears that Washington is becoming more accepting of electronic communications.

Emails between Board members, or between Board members and managers are not association records, so owners do not have a right to see those emails. As stated above, association records include Board meeting minutes, budget(s), and association financial records. Records would include paid invoices, contracts, and consultant reports. So, unless the information in the email serves as the official record of a Board member's approval of action taken without a meeting, an owner will not have a right to see emails between Board members or between Board members and managers.

Just because an email is not an association record does not mean the email could not be discovered in litigation. A Board could

refuse to provide a requested email to an owner, but if the owner were to sue the association the owner would probably be entitled to discover all email communications whether or not they are Association records.

Emails between the association's attorney and Board members or association managers are subject to an attorney-client privilege⁸ that can be waived if it is not preserved. Disclosure of such emails is often not in the best interest of the association and may make those emails subject to disclosure in future legal action. Simply copying an attorney on the email does not necessarily subject the communication to an attorney-client privilege. Emails with an association's attorney may also be protected by the work product doctrine, which applies to material prepared in anticipation of litigation.

Our recommendation at the time of this writing: If any association record is scanned to electronic form, it is still an association record. Emails between Board members and/or managers are not association records. Anything prepared for an attorney or in anticipation of litigation is privileged and not reviewable, even if it is a record. Data inside software, like Quick Books, are not association records. Reports printed out from that data are association records (like a balance sheet or a list of all owners), but just because it can be printed does not make it an association record. Data inside management software is not an association record. Information posted to websites is an association record, even websites limited to owners. If a website is limited to Board members only, the documents may not be association records.

¹ RCW 64.34.372(1)(Association Records – Funds). This applies to Old Act condo Associations. See RCW 64.34.010 (Applicability).

² RCW 64.32.170 (Records and books – Availability for examination – Audits).

³ RCW 64.38.045(1) (Financial and other records – Property of Association – Copies – Examination – Annual financial statement – Accounts).

⁴ Treating emails as Association records would raise logistical issues in addition to concerns about privacy, privilege, and free communication between parties that may unnecessarily complicate the task of Association record-keeping. An Association could adopt a policy to define what records are, and clarify if emails are or are not records.

⁵ RCW 64.34.372 (Association records — Funds); RCW 64.38.045 (Financial and other records — Property of Association — Copies — Examination — Annual financial statement — Accounts); RCW 64.32.170 (Records and books — Availability for examination — Audits).

⁶ See Title XL (Real and Personal property) 718.111 (Florida); Civil Code 5200-5240 (h) (California).

⁷ See RCW 64.38.035(3) (Association meetings—Notice—Board of directors).

⁸ See chapter entitled: “Attorney-Client Privilege: Are communications between an attorney and an Association’s management company protected by attorney-client privilege?”