

EMAIL BETWEEN DIRECTORS

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Email Discussions Allowed

Email communications between board members are allowed, even if they discuss association business. The Court of Appeal addressed the issue in [LNSU #1 v. Alta Del Mar Coastal Collection Cmty. Ass'n](#). The court reviewed the language of the statute. It concluded that a "board meeting" is an in-person gathering of a quorum of directors to talk about and take action on items of association business. ([Civ. Code § 4090](#).) Email exchanges among directors between board meetings where no action is taken do not constitute board meetings. In summary, directors are allowed to (i) conduct [emergency meetings](#) by email, (ii) send emails to management and vendors, (iii) send emails to [legal counsel](#), (iv) send administrative emails to each other about meeting dates and times, and discuss matters that may appear before the board. Even though allowed, discussions via email should be limited. Discussions and decisionmaking should be done in open meetings, where members can observe, or in closed executive sessions when appropriate.

[Virtual Meetings](#). The ruling does not impact virtual meetings since attendance in this manner counts as if the director were physically present in the meeting. ([Civ. Code § 4090](#), [Corp. Code § 7211\(a\)\(6\)](#).) For more information, see "[Virtual Meetings](#)."

No Right to Inspect Emails

Email communications between directors are not part of the books and records of the association. The kinds of records [subject to inspection](#) are broad but not universal. The Davis-Stirling Act does not define emails or letters between directors as part of the association's books and records. An exception would be [unanimous written consent](#) done by email. The consent must be made part of the minutes of a subsequent meeting.

Email Is Discoverable in Litigation

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. Including legal counsel in board communications does not protect emails from discovery. A communication is privileged only if the dominant purpose of the communication is to further the objectives of the attorney-client relationship. (*2022 Ranch LLC v. Superior Court* (2003) 113 Cal. App. 4th 1377, 1390.) Following are examples of email communications on behalf of the association that are privileged (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal. 4th 725):

- Email from attorney to director or manager to communicate legal advice,
- Email from director or manager to attorney seeking legal advice,
- Email between director and manager communicating legal advice received from an attorney, and
- Email between director and manager with attorney cc'd communicating legal advice.

Dedicated Email Accounts

For the following reasons, associations should set up dedicated email accounts for their board members:

Litigation. Even though members do not have a right to inspect emails between directors, that changes when litigation is filed. As part of discovery, a director's emails can be subpoenaed. When board members use personal accounts for association business, their emails can end up in the plaintiff's hands for the world to see if they are not carefully sifted from the record. That means an expensive process of attorneys reviewing and deleting 30,000 "private and personal" emails before producing relevant "business" emails to the other side.

Confidential Information. Another benefit of an "official" association account is that it becomes less likely that confidential business will be viewed by family members. Many couples share email accounts and see each other's communications. A family member is less inclined to log into a board member's account and read confidential communications.

More Businesslike. Finally, using a dedicated account should make directors more careful about what they write since emails are no longer personal but business emails belonging to the association. Knowing that the association retains the emails should make directors more cautious and businesslike in their communications. That raises an issue that needs clarification--conducting business by email.

Boards can reserve a domain name for their associations and establish an email account for directors. Setting up an account is easy, and the cost is modest. Email accounts should not be a generic "president@myfriendlyhoa.com" since they need to be terminated once a director is no longer on the board. Rather, use the director's name, "j.smith@myfriendlyhoa.com." Another method is to set up a dedicated email address through Gmail or similar services.

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