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E-MAILS ARE OFFICIAL RECORDS

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The Division of Florida Condominiums, Timeshares and Mobile Homes (the "Division") recently considered the question whether e-mail communications regarding association business between and among the board of directors of a condominium association which are sent to and/or from the board member's personal computers and devices are official records of the condominium association that must be maintained and made available to unit owners.

In a declaratory statement issued by the Division on January 12, 2022, the Division concluded that e-mail communications between and among members of the board of directors of a condominium association are official records within the meaning of Section 718.111(12), Florida Statutes, where such e-mail communications relate to the operation of the condominium association, even if such e-mail communications are sent to and/or from the board members' personal computers and devices and not through computers or devices owned by the condominium association or management company.

Section 718.111(12) includes as condominium association official records "all other written records of the association not specifically included in the foregoing which are related to the operation of the association." The Division found that e-mails that otherwise constitute official records are not excluded from the statutory definition of official records found in the Condominium Act merely because they are created or transmitted with board members' personal computers or devices, noting that e-mails are written records, that nothing in the Condominium Act "exempts such records when created or transmitted with a board member-owned device rather than an Association owned device."

With all the means of communication that are being utilized including texts and e-mails as well as communications through various applications (apps), associations must develop policies and practices in order to properly maintain such communications which come within the scope of official records.

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