Gmail Andrew Mowery <andrew.p.mowery@gmail.com>

Fwd: Legal question

Andrew Mowery <andrew.p.mowery@gmail.com> Mon, Nov 19, 2018 at 12:30 PM
To: Buck Hammond <buck.hammond@gmail.com>
Cc: Keith Knight <send.keith@gmail.com>

Buck,

I think it will make the meeting longer if everyone has to get their background and education verbally at the meeting. This ban on emails is absurd, at this point. What are we protecting ourselves from, besides efficient meetings?

I've already taken the time to write a brief. I think it should be shared. I think it should also be shared that this issue was known prior to the meeting last Tuesday. Some of us did our homework, knew this was a procedural issue, and tried to avoid it becoming a public display of ignorance of our own declarations. If we are going to literally document that we are avoiding email, we are literally creating the suspicion that we are not adhering to the spirit of the statute regarding transparency that overrides our bylaws, declarations, guidelines, and rules.

I also have reviewed the concern about emails becoming the fodder of lawsuits, and, I wholeheartedly disagree that matters that are not ***before a court*** deserve the secrecy allowed in an executive session. Again, we are not following "the rules" (which includes statute, bylaws, declarations, guidelines, and rules). We have somehow treated the hiring of an attorney as equal to a matter before a court, and they are simply not the same thing.

As long was we are following the 3 points necessary to prove that we are following the Business Judgement Rule (which is the standard for a judge/jury to rule in a case of breach of fiduciary duty), the emails will DEFEND the fact that we considered ALL opinions, including expert opinions coming from legal counsel. But, more importantly, a debate is healthy, not a threat. What we are doing, in effect, is creating obstacles for dissent to be noted for the future. It is short-sighted, at best.

Considering the fact that ***our legal counsel got it wrong*** on his first swing, if we don't share opinions such as mine, which are very hard to articulate in a face-to-face meeting (because it would require a reading that would be hard to follow verbally), then we are not, in fact satisfying the requirement in the Business Judgement Rule. We are literally documenting that we are only considering opinions that can be voiced at a meeting that has the pressure of time (particularly 2 days before some of us are hosting Thanksgiving), where the general members of the HOA are not noticed or invited, and that will not be recorded in detail in the meeting minutes.

I urge you to reconsider the ban on emailing about this subject prior to the meeting. I think it is critical that you consider the possibility that you are actually creating the liability we've stated we are trying to avoid by acting in this manner. I am not going to do anything in defiance, but I will most certainly print the email I've written (plus any other items I'd like on the record and reviewed by others), and hand them to everyone at the meeting. It is unfair to require our Board Members to consider something of such detail without the ability to have full consideration that includes their ability to look things up on the Internet - which they won't be able to do at the meeting without being distracted. It's simply a recipe for an uninformed Board to make an uninformed decision. We've already done that to our peril.

We've given the anti-email theory a spin, and it doesn't work. I'm not on board with continuing this policy any longer.

Andy

On Mon, Nov 19, 2018 at 8:01 AM Buck Hammond <buck.hammond@gmail.com> wrote:

Dear Board:
I had asked Peter for clarification on Article IX Section 7 to make sure I clearly understood it correctly. I would like to meet briefly as a group tomorrow night at our house to discuss a resolution to this matter. If we can resolve it without arbitration that will be a win win. Please refrain from email comments and just let me know if you can make it. Walker I know you are out of town so I will call you today.

Buck

---------- Forwarded message ---------
From: **Pete Dauster** <pdauster@gjmlawfirm.com>
Date: Sun, Nov 18, 2018 at 2:20 PM
Subject: RE: Legal question
To: Buck Hammond <buck.hammond@gmail.com>

Buck:

As unbelievable as it sounds, your association's Declaration gives the right to appeal the board's determination to the owners. The aggrieved only has the right to appeal the board's decision to the Owners via a special meeting. The board's determination will be upheld unless a majority of all owners in the association, not a majority of the members at the special meeting, vote to reverse or overturn the Board's decision. If I am reading the assessor's website correctly, there are 87 lots in the association so 44 members, regardless of the number of members that actually attend the special meeting, would need to vote to overrule the board in order to overturn your decision.

Kevin Ward has advised that he is not available on the 28th so we will need to pick another date. He also suggested that his clients would really like to resolve this matter. He suggested a one-time fine. Something to consider as well may be an agreement that if the property is sold the new owners would need to replace the roof or something to that effect.

Pete.

Peter J. Dauster

Gast Johnson & Muffly PC

323 South College Ave, Suite 1

Fort Collins, Colorado 80524

Telephone: (970) 482-4846

Facsimile: (970) 482-3038

E-mail: pdauster@gjmlawfirm.com