



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

Legal Notice: Violation of Duty to Act Within Scope of Authority & CCIOA Executive Board Members Powers and Duties

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

Thu, May 30, 2019 at 4:28 PM

To: Pete Dauster <pdauster@gjmlawfirm.com>, Maryann Goyn <goynm@outlook.com>, Buck Hammond <buck.hammond@gmail.com>
Bcc: matt clark <wmattclark@hotmail.com>

Pete,

The email below (from her to you on 5/16/19) was sent to me by Maryann Goyn, who appears to have attempted to use her position as an Officer (President) in order to prevent access by Board Members to legal counsel for the Association. I believe she is in violation of one or more Colorado Statutes and acting outside her scope of authority with this action.

<https://www.cohoalaw.com/governance/fiduciary-duties-of-board-members-an-overview/>
[Duty to Act within the Scope of Authority](#). Directors owe a duty to their associations and to their members to perform their duties in accordance with the authority granted to them by statute and in their governing documents. If directors exceed this authority and damage results, the directors may be personally liable for their unauthorized actions.

On the day prior to this action, I had filed with the Board a formal report of a series of violations of statute (CCIOA) and our governing documents by several current and former Board members. This was sent to your office on May 15, 2019 at approximately 445pm.

In an impartial fact-finding effort to gather documents related to this report, I had asked you via email to furnish copies of both the official Notice of Violation to the Bruckers (alleged roof violation) as well as all records of the advice given to Walker Flanary on the matter, as well as any other Board members who may have received such information.

I believe I am "entitled" to have access to such information due the Nonprofit Act, CCIOA, and our governing documents. In addition, I believe that upon request, Board Members must release documents from personal possession to the Board member that requests it, not the least of which is a request by the Secretary (and Officer) who is performing his fiduciary duty to retain all records pertinent to the concerns of the Association.

A. 7-128-401. General standards of conduct for directors and officers

(2) In discharging duties, a director or officer **is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:** (a) One or more officers or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented; (b) **Legal counsel**, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence; (c) Religious authorities . . . ; or (d) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

B. https://www.cohoalaw.com/wp-content/uploads/sites/532/2012/06/38-33_3-3031b.pdf

"Notwithstanding any provision of the declaration or bylaws to the contrary, **all members of the executive board shall have available to them all information related to the responsibilities and operation of the association obtained by any other member of the executive board.** This information **shall include**, but is not necessarily limited to, reports of detailed monthly expenditures, contracts to which the association is a party, and **copies of communications, reports and opinions to and from any member of the executive board** or managing agent, **attorney**, or accountant employed or engaged by the executives board to whom the executive board delegates responsibilities under this article." (emphasis supplied)

After not receiving response for several days, I did contact you by phone, and was told you had been forbidden from speaking to or emailing any Board member due to a restriction placed by "the President". Upon asking Both Maryann Goyn and Buck Hammond whether they had placed this restriction, I learned from Maryann that she had sent this email to you the day after I had filed a formal report of a violation with the Board. (see below email from 5/16/19)

From: M G <goynm@outlook.com>
Date: May 16, 2019 at 4:03:44 PM MDT
To: Peter Dauster <pdauster@gjmlawfirm.com>
Cc: "wgflanary@gmail.com" <wgflanary@gmail.com>
Subject: Poudre Overlook HOA

Hello Peter-

We haven't had the opportunity to meet yet but I wanted to introduce myself. I recently became President of the Poudre Overlook HOA so thought I would let you know that our leadership has changed. Moving forward, **any inquiries related to the Poudre Overlook HOA will be coming from me.** Walker Flanary (cc'd) is the Vice President so would be the other board member that would potentially be contacting you should an urgent issue arise when I am unavailable.

If you have any questions, please feel free to contact me directly. Our HOA email address has not changed. This is my personal email and my phone number is 307-399-7457.

I look forward to working with you if the need arises.

Best regards-
Maryann Goyn

This has the appearance of obstructing an impartial fact-finding review of the violation, particularly due to the immediate sequence in timing after giving notice of a report of a violation that involved Maryann, Walker, and Irve (sole members of the 2018 ACC). When I brought up the fact, and presented printed copies of the documentation of these violations at the May 14, 2019 Board meeting, all three vociferously protested the concept that any violations of any statute or governing document had ever occurred at all.

I have also cited the above statutes to Maryann and Buck several times in several emails (before and after this Board meeting), and neither will respond to the possible violation of state law. This concerns me deeply.

Walker Flanary (2018 CCR Chair, 2019 ACC Chair, and 2019 VP as of May 14) and Irve Denenberg (2018 ACC Chair) have thus far refused to cooperate and provide nearly all documents regarding rules and covenant enforcement in 2018. They have been non-responsive to my requests as Secretary since February, and have turned over only a handful of documents after two months of requests, in which the prior President, Keith Knight, had to step in to remind both of their fiduciary duty in regards to document retention.

From: **Poudre Overlook HOA of Fort Collins** <poudreoverlookhoa@gmail.com>
 Date: Fri, Jan 25, 2019 at 1:26 PM
 Subject: Re: Documents & Emails
 To: **Walker Flanary** <wgflanary@gmail.com>, **Irve Denenberg** <ibdpo4hoa@gmail.com>
 Cc: **Andrew Mowery** <andrew.p.mowery@gmail.com>, **Maryann Goyn** <goynm@outlook.com>

Gentlemen:

Please take care of this request. **Remember forwarding this HOA information to the new Secretary is a fiduciary responsibility and vital for us to be in compliance.** If there is any issues with completing this task, please call me so I can discuss this with you.

Sincerely,
 Keith Knight, President
 Poudre Overlook HOA of Fort Collins

However, to complicate matters even more, Maryann has recently sent to me a document alleged to be one of the ones I have requested: The Notice of Violation sent to the Bruckers. It is attached to this email as "Roof Violation final.pdf".

In that document, there were two striking issues that were obvious upon reading. First, the date on the document does not match the date of the document the Brucker's Attorney claimed to have received (November 1 vs. November 6, 2018). Second, the November 12, 2018 letter from Kevin Ward clearly states that there is a problem with identifying whether the Board or ACC is the party sending the Notice or taking action (which would necessarily then lead to two different appeals processes, according to our documents).

Since the document is purported to have been authored and sent by Buck Hammond, who is signing for both the Board and as "President" (there is no President of the Board, as the President is an Officer who answers to the Board). It seems impossible for Mr. Ward to have raised this issue with such a clear signature line from Buck Hammond.

But, after further examination of the document properties reveals the true author: Walker Flanary. While there may still be some innocent explanation, the stonewalling from all parties involved gives the appearance of obstruction to an impartial fact-finding that should be performed by the Board pursuant to it's Policy for Enforcement of Covenants and Rules, Section 4.

POUDRE OVERLOOK HOME OWNERS' ASSOCIATION

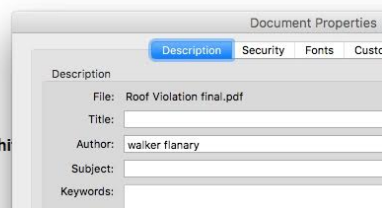
FIRST NOTICE OF VIOLATION

November 1, 2018

Kevin and Linda Brucker
 1386 Tributary Court
 Fort Collins, CO 80521

Violation: Violation of Archi

Dear Mr. and Mrs. Brucker:



To make matters even worse than that, Buck Hammond, who has been my point of contact on my report of a violation (which was copied to you on 5/15/19), replied with the following plan:

----- Forwarded message -----

From: **Buck Hammond** <buck.hammond@gmail.com>
 Date: Tue, May 14, 2019 at 3:59 PM
 Subject: Re: CCIOA Regarding Enforcement Policies - Notice of 2018 Violations by ACC
 To: **Andrew Mowery** <andrew.p.mowery@gmail.com>

Thank you for the update. **I don't think anyone is "knowingly" violating rules.** So here is my suggestion, **I will support the ACC Committee developing a plan to come into compliance.** Give them 1 month to outline remedies and bring it to the board and present it for resolution. This way the Committee is involved and there will be group buy in.
 Buck

While this has the air of reasonableness, the problem then persists for several reasons related to the manner in which Maryann and Walker are operating the ACC up to current.

1. They held a meeting on April 23, 2019 without any notice whatsoever to the Owners or any Board members.
2. After the meeting, neither would disclose what occurred at the meeting or release the minutes (in draft form), in spite of repeated requests over a 4-week period.
3. Attempts to comply with CCIOA to allow Owners to know about the ACC meeting on 5/29/19 by email were strongly objected to by Maryann, even with full knowledge that an announcement on a page known to get no visitors on the website would equate to non-transparency and non-compliance with CCIOA statutes. She was supplied with copies of the relevant statutes several times.
4. At the meeting on 5/29/19, the Chair, Walker Flanary, attempted to disallow any comments from homeowners, Officers, or Board members by first pushing the comment period until the end of the meeting, and then attempting to adjourn without the promised comment period at the end.
5. An attempt to place an item (of a different nature) on the agenda for the next meeting on June 27, 2019 was vetoed without a vote by Walker Flanary and Irve Denenberg (who is simply an ACC member at-large at this time), who vocalized personal opinions against the subject matter. They ended discussion without a vote (which is a violation of Robert's Rules of Order), and would not allow the item to be placed into the agenda for the next meeting. Irve Denenberg then inappropriately suggested to "Send a request to the ACC for Approval"
6. Attempts to resolve the matter by contacting Maryann regarding Robert's Rules of Order in setting meeting agendas was met with a response advising me to send an email to the Board.
7. I believe Maryann may have ordered all other Board members to cease communications with me, as none are responding to any issues regarding enforcement of rules on Board members.
8. It therefore appears impossible to enforce statutes or rules on the members of the 2018 or 2019 Board or ACC.
9. The inability of a Board member to contact the Association Attorney makes advice on such matters prohibitively expensive. You have demanded from me a \$500 retainer and \$275/hr fees personally for any advice on such matters, or to even have an initial review of such matters, due to Maryann's 5/16/19 email. While other attorneys have offered lower rates, it does not seem appropriate that a Board member would be required to spend out-of-pocket when the matter is of this serious of a matter.

As a result of this sequence of events, Buck's suggestion that it is possible to work with or collaborate with the ACC or it's chairman, Walker Flanary, is demonstrated to be out of the range of possibility. I believe this may mean that all possible means of resolving the matter outside of the extreme legal actions available to the Owners and/or Board are now exhausted. All other mediation/legal options are prohibitively expensive.

It also, again, has the appearance of obstructing any inspection of the facts surrounding the issue that is the basis of the complaint, or contemplating any forward path that resolves the matter. Walker is demonstrating a lack of ability to both follow the rules as well as act as an impartial member of the ACC and Board on these matters, and even on such basic concepts as running a meeting. Both Maryann and Walker have objected vociferously to use of Robert's Rules of Order, and have refused to take up or add to the agenda a motion I have made 10 days ago to affirm the specifics of RROO for Small Meetings.

I bring this to your attention today because the matter concerns me deeply as it may result in a loss of protection from legal liability for the Association, the Board, and individual Board members who are simply refusing to follow our policy and enforce our rules. I believe these are now crossing the line of "wanton and willful" actions. This is not a hypothetical situation, as the incident at the heart of the report of violation resulted in significant legal expense and time lost by all board members who apparently received legal advice from your office. You can review their letters to see these exact concerns raised.

To be frank, the additional concern I have with you directly is whether or not you gave proper advice or whether Walker failed to relay proper advice. Without knowing what Walker did to brief you, the content of your interaction, as well as any written communications with Walker or any other Board members regarding any aspect of the Bruckers affair, it would be impossible for the Board to perform it's impartial fact-finding duties in regards to a formal report of a violation of our CCRs.

What is clear, from the 10/9/18 Meeting minutes alone is that we voted upon fines for the Bruckers, and documented in the minutes that we would THEN seek legal advice and THEN send our notice. And, this does appear to be the actual sequence of events. This is a smoking gun violation of statutes, and we don't have to contemplate whether or not the Bruckers wanted a hearing, because they made that explicit in writing several times. Furthermore, I've documented in writing that the Board did consider it's Policy of Enforcement prior to meeting a second time specifically do decide upon action.

If after all that review, Walker is still advocating fines in our 11/20/19 meeting, clearly there is a problem with either your advice, or Walker following it (and relaying it correctly to the rest of the Board). Again, this is a very serious matter, and the documents we do have already are sufficient to warrant enforcement of the rules on Board/ACC members who not only refuse to admit they did anything wrong, but appear defiant to cooperate going forward as Buck wishes would happen.

This is a very serious matter that deserves no more delays, and given the emphasis on statutes of limitations (1-year), it does appear possible that the persons involved in stonewalling and obfuscating are aware of the severity, and are in fact using such tactics to run out the clock before Owners can become aware and take action. The one thing Walker did relay as advice from you (which caused the Board to no longer offer a 3-year or 8-year delay with proportional fines, but instead threaten immediate fines and demands to replace the roof) that we MUST take action due to the statute of limitations.

The level of effort expended to avoid simply turn over documents appears to be consciousness of guilt. And, combined with the possible use of false documents leads to a review of the statutes that govern removal of board members for conduct that meets at least 4 standards of the statute.

I believe CRS 7-128-109 is the appropriate citation, and the criteria for fact-finding to apply this statute is:

"fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the nonprofit corporation, or a final judgment has been entered finding that the director has violated a duty set forth in part 4 of this article, and that removal is in the best interests of the nonprofit corporation."

Given the evidence we can see thus far, and the obstruction to obtaining other key documents from you, it seems that without cooperation from you, it may leave me no choice but to seek resolution through a Larimer County Court in order to return order to our association. ***I do not wish to take this path***, and am seeking resolution akin to the proposal by Buck Hammond. However, I am no longer getting responses from any of the parties involved, and the matter is ripe for consideration and action as all other attempts to resolve the matter are now exhausted with a fast-approaching statute of limitations on the matter, which may toll as early as June 30th.

I believe it is necessary to review the actual notice sent to the Bruckers to see if it is dated November 6 or November 1. I believe it is necessary to see and know whether or not we did or did not send them the appropriate "enclosed documents", which are in the possession of Kevin Ward, or may have already been turned over to you. I believe it is necessary to know about all communications you have had with the Board about this matter, and make these available and accessible to all Board members without delay.

Upon review of these documents, it will be possible to factually determine whether or not the criteria above are met so we can consider resolution.

I do expect, at the very least, the improper restriction by Maryann (as an Officer, acting without a vote from the Board) be immediately lifted so that I may seek your counsel as a Board member who has valid concerns that affect the Association. It is my understanding that you represent the Association, and not the President, Officers, or any individual Board members (or the Board, for that matter).

If these facts do not raise concerns on your end, then I respectfully ask you to explain your position and refusal to cooperate in writing without any personal expenditure on my part.

Sincerely,

Andrew Mowery

3 attachments



Roof Violation final.pdf
547K



18-1112 LETTER Wick and Trautwein re Bruckers.pdf
100K



18-1024 LETTER Wick and Trautwein re Bruckers.pdf
363K