



Andrew Mowery &lt;andrew.p.mowery@gmail.com&gt;

## NOTICE OF NON-COMPLIANCE WITH CCIOA AND GOVERNING DOCUMENTS: 2/25/22 Association Records Request

**Andrew Mowery** <andrew.p.mowery@gmail.com>  
To: Andrew Mowery <andrew.p.mowery@gmail.com>

Thu, Mar 10, 2022 at 11:32 AM

To the POHOA Board:

I am giving formal notice that i believe, in good faith, that the POHOA Board is not in compliance with CCIOA or its own governing documents due to the response to a document request made on 2/25/22.

I have reviewed your response to the Document Request made since the new CCIOA requirements passed in HB21-1229 have been in effect. As you may or may not be aware, Rep. Titone was the Sponsor of that Bill, and worked extensively with industry representatives, including CAI to address any and all concerns with passage. It is now the law in Colorado.

The text of the new statute is available on the State of Colorado website here: [https://leg.colorado.gov/sites/default/files/2021a\\_1229\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2021a_1229_signed.pdf)

My request was made on 2/25/22 by email and 13 days have passed. Given the refusal to provide email records on the basis of your claim that they are "not association records", I am now following up to ask for reconsideration of your decision on items B through I as stated here as a means of resolution of this dispute that is contesting your decision:

Owner's Name: Andrew Mowery \_\_\_\_\_ Date: 3/8/22

Address: 1350 Bubbling Brook Court

Telephone #:970-310-5296 \_\_\_\_\_ Email Address: andrew.p.mowery@gmail.com

PLEASE FIND POU DRE OVERLOOK HOA's RESPONSE TO YOUR REQUEST OF 2/25/22 THAT POU DRE OVERLOOK HOMEOWNERS' ASSOCIATION ("ASSOCIATION") ALLOW INSPECTION AND / OR COPYING OF THE ASSOCIATION RECORDS AS DESCRIBED IN YOUR ITEMS A-I (attached)

Item A. The Management Contract between Trademark and POHOA is attached

Items B-D, G, H As there was no Action without a Meeting, any emails, if they exist, are not Association records.

Item E. The emails for Actions without a Meeting for engaging VF Law to 1) prepare a procedure to comply with HB21-1310 and 2) review current HOA documents are attached to the appropriate BOD minutes which are on the website for all homeowners to view.

Item F. As there was no Action without a Meeting, any emails, if they exist, are not Association records. Actual legal advice and legal bills contain privileged information which home owners are not entitled to

Item I. Text messages, if they exist, are not Association records.

The relevant section of HB21-1229, for your convenience, is copied here:

(4.5) IF THE ASSOCIATION FAILS TO ALLOW INSPECTION OR COPYING OF RECORDS IN ACCORDANCE WITH THIS SECTION WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT OF A WRITTEN REQUEST SUBMITTED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND PAYMENT OF ANY FEES REQUIRED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE ASSOCIATION IS LIABLE FOR PENALTIES IN THE AMOUNT OF FIFTY DOLLARS PER DAY, COMMENCING ON THE ELEVENTH BUSINESS DAY AFTER THE ASSOCIATION RECEIVED THE WRITTEN REQUEST, UP TO A MAXIMUM OF FIVE HUNDRED DOLLARS OR THE UNIT OWNER'S ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE REFUSAL, WHICHEVER IS GREATER.

The relevant section of the POHOA Document Retention Policy according to the POHOA website (hosted by Frontsteps) at this URL: [https://evercondo-app.s3.amazonaws.com/uploads/communities/poudreoverlookhoa/file/1500928/Poudre-Overlook-Policy-Regarding-Inspection-and-Copying-of-Association-Records.pdf?X-Amz-Expires=1800&X-Amz-Date=20220310T160155Z&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIWDHBYQK7XJT3PQ/20220310/us-east-1/s3/aws4\\_request&X-Amz-SignedHeaders=host&X-Amz-Signature=f2d570792d78ff729fea0fbcbe546bdbf2c1168e1a29dc8a0fea9355dacf8f5d](https://evercondo-app.s3.amazonaws.com/uploads/communities/poudreoverlookhoa/file/1500928/Poudre-Overlook-Policy-Regarding-Inspection-and-Copying-of-Association-Records.pdf?X-Amz-Expires=1800&X-Amz-Date=20220310T160155Z&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIAIWDHBYQK7XJT3PQ/20220310/us-east-1/s3/aws4_request&X-Amz-SignedHeaders=host&X-Amz-Signature=f2d570792d78ff729fea0fbcbe546bdbf2c1168e1a29dc8a0fea9355dacf8f5d)

**3. Association Records to be Maintained.** The Association shall maintain in electronic or paper format the following records, which are considered the Association's sole records for purposes of document retention and production to Owners, at the Association's office or the office of the Association's managing agent:

3.1 Operating budget for the current fiscal year, and detailed records of receipts and expenditures affecting the operation and the administration of the Association.

3.2 Records of claims for construction defects and amounts received in settlement of those claims.

3.3 Minutes of all Board and Owner meetings, a record of any Board or Owner action taken without a meeting, and a record of action taken by any Board committee.

3.4 Written communications among, and the votes cast by, Board members that are directly related to an action taken by the Board without a meeting pursuant to the Colorado Revised Nonprofit Corporation Act, as amended ("Nonprofit Act"), or the Association's Bylaws.

According to POHOA's own policy, Section 3 Paragraph 3.4 states that "the written communications among, and the votes cast by, Board Members that are directly related to an action taken by the Board without a meeting pursuant to CCIOA", **are, in fact, association records**. This conflicts with your response to this request, claiming the opposite of what is stated in this written policy.

POHOA may have, in fact, altered this policy (recalling an attempt in early 2020 that failed and was withdrawn), but there is no record of anything newer, and according to the website, the above policy was uploaded to the site on January 15, 2022 indicating is the most recent and current policy of POHOA.

Poudre Overlook HOA Poudre Overlook HOA		
File Name ▲	Category	Uploaded At
<a href="#">2021 10 Signs and Flags Policy</a>		10:58:16 AM Jan 15 2022
<a href="#">2021 1012 Snow-Removal-Policy</a>		10:51:44 AM Jan 15 2022
<a href="#">Adoption-and-Amendment-of-Policies-Procedures-and-Rules</a>		10:50:26 AM Jan 15 2022
<a href="#">Collection-of-Unpaid-Assessments</a>		10:50:53 AM Jan 15 2022
<a href="#">Conducting-Association-Meetings</a>		10:50:45 AM Jan 15 2022
<a href="#">Enforcement-of-Covenants-and-Rules-Including-Notice-and-Hearing-Procedures-and-Schedule-of-Fines</a>		10:51:12 AM Jan 15 2022
<a href="#">Handling-Conflicts-of-Interest-of-Executive-Board-Members</a>		10:50:48 AM Jan 15 2022
<a href="#">Inspection-and-Copying-of-Association-Records</a>		10:51:06 AM Jan 15 2022
<a href="#">Miscellaneous-Policies</a>		10:58:44 AM Jan 15 2022
<a href="#">Reserve-Policy</a>		10:50:57 AM Jan 15 2022
<a href="#">Rules and Regulations</a>		10:52:07 AM Jan 15 2022
<a href="#">Update to Landscape Requirements from Rules &amp; Regs - Signed</a>		1:40:31 PM Dec 05 2019

In addition, you have also claimed privilege for the request relating to this section of the document request claiming that it requests "legal advice":

**F) All emails between POHOA and Trademark regarding the subject of RVs/Sprinter Vans leading to legal expenses, including the expenses in January/February of 2021, the actual legal advice regarding the subject in January/February of 2021, including all emails between Trademark and VF Law (not privileged, as Trademark is not a client of VF Law) regarding parking of Sprinter Vans in driveways, including all emails regarding the legal expenses for secondary reviews after the January/February advice, regarding the contact with VF Law without approval of the Board, regarding payments for any legal expenses by Trademark to VF Law or to POHOA to reimburse for VF Law Expenses**

As stated above, there are elements of item F that are clearly not privileged and are POHOA-Trademark communications. Again, Trademark is not a client of VF-Law, so the emails to the firm are not privileged, and even those that do not contain legal advice are similarly not privileged. And, as POHOA disclosed Board-Attorney communications with several attorneys in response to the 2020 CCRD case, in several instances in 2018-19, such privilege has been pierced and can no longer be asserted. Paying twice for legal advice is a matter of fiduciary duty, and the contents of the advice leading to the additional expense for homeowners is therefore a legitimate matter for inspection by homeowners who are concerned about the practices leading to the expense.

While I have not yet submitted the request via Certified Mail, I may choose to do so if POHOA remains unresponsive to the request for emails as association records. I do not believe that such escalation is necessary at this time, but I

believe *it is appropriate, as VF-Law has stated, to **define boundaries***. While HB22-1229 and Section 4.5 above contemplates legal liabilities for failure to comply, I am not at this time suggesting legal action or litigation is necessary. I believe, at this time, that POHOA is failing to recognize its obligations per CCIOA, and this communication is an attempt to help the volunteer Board understand its obligations under the law as a matter of education. It is also important to note that Mr. Bielli was given notice on 9/29/21 that this specific issue is part of my political platform, and therefore a valid topic for raising concerns in regards to the performance of the Board as it relates to the influence of other homeowners in their electoral decisions. This is a fair use of those rights, duties, and privileges.

In order to assist the POHOA Board in an effort to educate, I am choosing to reference the website of Winzenburg Leff Purvis Payne at this URL: <https://www.coholaw.com/governance/board-communications-and-emails/>

This firm is, like VF-Law, a CAI member whose interpretations reflect the industry that did not object to the requirements contained in HB22-1229, which allowed its passage. Therefore, no such claims of competing "interpretations" are conceivable in this context. This referenced firm is one of the most aggressive firms in defending HOA Associations and their Boards, so their written opinions can be construed as applicable general advice to HOAs who value CAI advice on legal matters. These are not the legal opinions or guidance offered by a rogue firm that opposes normal regular compliance with CCIOA. These interpretations are not, in fact, unusual, "crazy", or my own personal opinions.

According to their website:

**"In 2012, the Colorado legislature changed the laws governing community association records, including requirements that Board members' e-mail addresses be retained as official records."**

This is not conditional. The emails sent to and from Board members are, in fact, the records of the association according to firms following CAI guidance on the matter.

As evidence that POHOA and its Board Members are following this guidance, we can review the paragraph regarding the nature and hosting of such email addresses. All POHOA Board Members have, since at least 2019, created gmail-based email addresses specific and unique to each Board Member. While POHOA chooses not to have continuity by establishing email addresses inherited and passed by successive Board members, it does appear to advise new Board members to create new gmail email addresses that combine their names in some manner with the acronym "POHOA".

**"To address these concerns, we recommend that our association clients create e-mail addresses for the Boards, and that the Boards pass these along to new Board members as they are elected. This ensures continuity of communications for homeowners, and it also protects Board members from the risk of having their personal or work e-mails subject to discovery in the event of litigation. *Board members can also create their own personal association e-mail addresses, although this does not have the bonus side of maintaining continuity as the Board turns over. Either way, Board members should have dedicated association e-mail addresses.*"**

In response to several lettered items in this document request, the POHOA Board has chosen to declare that emails are not association records. This conflicts with the legal guidance from CAI-related firms.

However, the guidance continues on the subject of Action Without A Meeting:

**"An unfortunate side effect of the ease of electronic communication, other than the potential for incivility, *is the desire for Boards to take action by e-mails instead of at Board meetings*. While the Non-Profit Corporation Act, and many community Bylaws, permit actions without meeting, *the Colorado Common Interest Ownership Act grants to unit owners the right to speak on an issue before the Board votes on that issue*. Contact your attorneys to make sure that you are not *inadvertently preventing interested owners from speaking on an issue before the Board, by making electronic decisions.*"**

As a secondary reference (in case a debate arises as to the interpretation of the firm above arises), the firm Western Law Group, headed by Gabriel Stefu, who is also a CAI member, states the following about email as association records:

"C.R.S. 38-33.3-317(1)(d) states, in part, "Written communications among, and the votes cast by, executive board members that are...directly related to an action taken by the board without a meeting" **are part of the association's records and are discoverable.**

**The legislature has been clear that e-mail constitutes a written correspondence.** Therefore, any e-mails which are "directly related" to an "action" taken by the board "without a meeting" MUST be preserved as part of the association records."

Source: <https://www.westernlawgroup.com/law-articles/2017/7/20/e-mail-and-hb12-1237-what-board-members-need-to-know>

Additional Source:

<https://coloradofoic.org/wp-content/uploads/2015/05/HOA-Records-Bill-Summary.pdf>

House Bill 21-1237: [https://leg.colorado.gov/sites/default/files/images/olls/2012a\\_sl\\_232.pdf](https://leg.colorado.gov/sites/default/files/images/olls/2012a_sl_232.pdf)

It appears that POHOA, which has received comments from a member of the Architectural Control Committee at the 3/8/22 Board Meeting regarding transparency because that committee is operating in a manner where **all actions are taken by email**, and without any actual Action Without A Meeting documentation, is operating both at the Board and Committee levels, with intentions to remain non-compliant with these CCIOA requirements. The ACC member, who is a former attorney, also let the board know that he believes that this manner of doing association business (vote by email) may create legal liability for the association. It is my opinion that concealing the records may also add to that concern of legal liability and expense for the association.

It appears the POHOA Board is choosing to direct its members to conceal information within their POHOA-specific gmail addresses created for the purpose of avoiding personal email addresses from becoming involved in document requests.

This is somewhat alarming but not surprising, as the conflict leading to the removal of the Board on 8/27/19 was partly based on a conflict caused by Board members and ACC members refusing to turn over to the Secretary the email records that were specifically leading to legal binding decisions of the Board and/or Committee. In other words, this isn't just an instance, but a pattern of behavior long after POHOA knew or should have known that the law changed on January 1, 2013 (leading to a policy change that is currently posted on the POHOA website), and that compliance with the document retention policy and compliance with document requests is necessary without condition or exception. CCIOA states clearly that this is "must" provision.

It is also important to note that the same guidance from this CAI-related firms (Winzenburg Leff Purvis Payne) also addresses an issue that arose in 2019 regarding the perception of a burden on Board members to become educated on matters, often by email, prior to making decisions. While some past Board members have claimed that emails sent for the purpose of Board members educating other board members constitutes "harassment" (and POHOA attempted to make this an element of an "Anti-Harassment Policy" in April of 2021), the fact of the matter is that this guidance suggests that *those who consider it a burden are perhaps not fit for the duties of being a Board member*. In other words, absent an educated Board, Board members should reasonably anticipate the use of email for the purpose of educational topics when there is even the perception of a failure to understand or comply with CCIOA. These are therefore, by no means, remotely considered harassment by this law firm:

"If a Board member is overwhelmed or otherwise disinterested, and **does not participate in discussions** or votes (either by e-mail or in person, when appropriate), **that Board member is not doing his or her job**. Colorado law protects decisions made in the reasonable business judgment of Board members; it does not protect the Board's failure to make a decision. **If you are on a Board and are unable to participate fully in the decision-making process, consider whether you have enough time and interest to devote to this duty**. If you are overwhelmed by e-mails, talk to your other Board members and management company to try to decrease communications outside of meetings. **It is your duty to be informed and make decisions**; you should not just rely on someone else who seems more interested or engaged.

**A good Board member acts in the best interests of the Association by protecting its records, participating fully in accordance with the law, and actively making decisions to further the Association's**

purposes."

Therefore, while I am aware of your concerns with the length of emails, this email **requires a thorough explanation to educate the POHOA Board** which appears to neither understand its obligations under CCIOA and the current governing documents of POHOA, nor its duties as it relates to the protection of HOA records which do, in fact, include ALL of the emails contained within each of those specific gmail addresses created for the specific purpose of use by Board members for the official business of POHOA - including deliberations in advance of important decisions such as the hiring of a new attorney. I do not intend for such emails of length to create any unnecessary burden, and do believe, in good faith, that this is a necessary communication as the POHOA Board, who is being consulted by VF-Law, does not appear to know or understand it's duties and obligations.

As mentioned at the 3/8/22 meeting, respect is a two-way street. While long emails are perpetually framed by certain POHOA Board Members as harassment, a burden, or posited that such requests are "crazy", the fact of the matter is that they must be honored as a matter of compliance. The POHOA Board has yet to recognize that CCIOA is only enforced by homeowners, as individuals. DORA is only capable of receiving complaints (they are copied on this email) for the purpose of informing legislators (Rep. Titone, the sponsor of HB21-1229 is copied on this email as well) as it relates to legislative activities. You regularly fail to recognize that you create a burden of actual duty of the homeowners to give notice when non-compliance is observed and recognized, as well as to request dialogue, compliance, and then, if necessary escalate to mediation or litigation if an HOA Board refuses to comply.

This is why HB21-1229 contemplated and recognized that such burdens that fall upon homeowners takes up their time, and that a claim upon which relief can be granted was a necessary component of the bill to avoid having a court dismiss a case for lack of statutory damages. In fact, the litigation with POHOA, which defended its actions with a Motion to Dismiss based upon the lack of such an actionable claim was one of the inspirations for this portion of the bill sponsored by Rep. Titone. It appears POHOA, in spite of long-standing interpretations of the law whereby emails to and from Board Members are, in fact, the records of the association, is still considering this a matter of contention and interpretation. It therefore is a burden on my time, and could be argued as an element of and for relief if such a claim were to be pursued.

Again, defining boundaries is not a legal threat or anything similar. You all simply appear to be unaware of these things.

You are well aware that I have been seeking these documents not only since the 2/25/22 request, but that it is a request (for association email records) made previously, including the July 2021 requests which did not receive responses. So, while the statutory timeline criteria requiring Certified Mail has not yet been met, I am prepared to send this request again via that method to initiate that timeline. I am kindly requesting that you do not create any additional burdens of time or expense in advance of having to take that step as a duty envisioned by CCIOA as a matter of compliance enforcement by a homeowner on his/her respective HOA board.

In other words, please just turn over the emails. I would also like this topic, as it was raised by an ACC member, to be added to the agenda of the next Board meeting, for the ACC to cease and desist pursuing the use of emails to make decisions without public meetings allowing homeowner participation or comments, and for POHOA to immediately secure, preserve, and protect the gmail addresses and their contents to avoid spoliation of evidence of non-compliance on this or any other action taken. **These emails are the records of the association**, and it also appears necessary for the Board to reevaluate it's education policies in light of this evidence of non-compliance.

I would appreciate a timely response with the requested records. I will be sending a Certified letter on 3/11/22 if no response is received to begin the timeline and meet the criteria of CCIOA mentioned above. If POHOA believes this issue is a candidate for some form of free alternative dispute resolution involving an impartial fact-finding party, I am open to those options. I sincerely believe this could and should be resolved without additional burdens for any party as the law and governing documents are not open to alternative interpretations, and the request is normal and proper. Please honor the original document request fully.

Sincerely,

Andrew Mowery

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

From: **Poudre Overlook HOA of Fort Collins** <[poudreoverlookhoa@gmail.com](mailto:poudreoverlookhoa@gmail.com)>  
Date: Wed, Mar 9, 2022 at 5:48 AM  
Subject: Response to Request for Association Records  
To: Andrew Mowery <[andrew.p.mowery@gmail.com](mailto:andrew.p.mowery@gmail.com)>

Please find in the attached pdf, the Association's response to your request for Association Record's.  
Regards,

*Poudre Overlook HOA Board of Directors*

PO Box 101  
Laporte, CO 80535

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**2 attachments**



**Answer to Request for Association Records.pdf**  
907K



**22-0225 POHOA Document Request - Trademark.pdf**  
162K