



Andy Mowery &lt;pohoaandy@gmail.com&gt;

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## this is the new account

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**Andy Mowery** <pohoaandy@gmail.com>

Fri, Aug 19, 2022 at 7:03 PM

To: Poudre Overlook at FtC &lt;atftcpoudreoverlook@gmail.com&gt;

Cc: Clay Jones &lt;joneswv66@gmail.com&gt;, Lora Ballweber &lt;lrb2jab34@msn.com&gt;, lb4pohoa@gmail.com

Hi Lora,

This is the USPS tracking.

[70200640000195774293](#)

Please let me know if you do not intend to allow forwarding, which would require sending me the confirmation code in the interim.

I also think, in spite of your "fresh start" comment, you'll need to retain the emails and history of all prior accounts that have not been deleted (including [pohoadocrev@gmail.com](mailto:pohoadocrev@gmail.com)). There are several ways to do this:

- A. You can import the account from a backup. Sara Young made one after resigning, apparently to be shared with former board members. That will be the content from inception through 5/25/22.
- B. Similarly, I made a backup in mid-June prior to adding delegate accounts, and made another backup earlier this week.
- C. The easiest way, however, is the same import process I used for import into [pohoalora@gmail.com](mailto:pohoalora@gmail.com), [pohoaclay@gmail.com](mailto:pohoaclay@gmail.com), [pohoaandy@gmail.com](mailto:pohoaandy@gmail.com), and [joneswv66@gmail.com](mailto:joneswv66@gmail.com). That's the import that can take up to two days, but avoids the intermediate step of a downloaded file, and the re-import of that file into another account.
- D. Leave the prior account as-is, and maintain multiple accounts - document requests would then need to be researched in two locations, and it would require security protocols and delegate accounts for each email address. If you don't like [pohoalora@gmail.com](mailto:pohoalora@gmail.com), you can substitute [lb4pohoa@gmail.com](mailto:lb4pohoa@gmail.com) in settings.

What I don't believe is in the best interest of the association is to delete the account (or any account containing communications relating to POHOA business), and I would protest this action without another vote.

I'd also like to address another concept that you appear not to understand: Giving orders or directives to other Directors (Board Members) isn't really a thing. Even if you have a majority vote.

An extreme example is that you can't vote to order another Director (or anyone) to do something illegal or non-compliant. For instance, you can't vote to say a Director must set fire to a house painted in the wrong color. A person following such a directive would lose protections offered by the Business Judgement Rule.

I believe that given the evidence of deliberate deletion of emails, the lack of production in several Document Requests, and a refusal to state what the current policy is leads me to believe that it is more important to protect the records of the association than to give you the password, and perhaps cause issues by changing the email address. But, now since you've already done so, the best I can do is create a backup and demand that my dissent be recorded in the official records (meeting minutes) so that when this goes haywire (we should have a QUALIFIED Administrator), those who voted for it are then the parties held accountable, if necessary.

I also want to make clear that you did not give proper notice for the last meeting because it was not posted 48 hours in advance, you chose not to put up the sandwich board, and did not use the Frontsteps Bulletin system to send an email notice about the meeting. I am required by our governing documents to give written notice that I do not assent to the decision, and find it potentially ineffective due to these notice issues. Please make sure the meeting minutes record my dissent about meeting all legal requirements to make the decision to create a new email address a legally

binding decision for the association. You will now have full access and control of the administrative account without conditions, so the creation of a new account is reasonably questioned as having more cons than pros - but I'm willing to listen.

You've raised this issue in regards to the creation of [pohoalora@gmail.com](mailto:pohoalora@gmail.com), including filing a case with the FBI on the alleged claim of criminal impersonation - even after being sent information making it clear that this follows the policy of POHOA in managing gmail in the past, even though you are aware that Administrators are recommended to create such accounts in Google's guidelines and protocols for administrators, and even though you always had the login credentials and could have easily deleted the account (and created a new one, just have you have now done for yourself) to create delegate access. It's absurd to have made such a claim, and publicized it to the community when you knew, or should have known, it was not true. I await your retraction.

But, the more important general principle is that Directors of Non-Profit Corporations, and HOAs in particular, have duties. This website is from one of the 5 firms in Colorado that claims to be the only firms that can interpret HB-1137.

<https://www.ochhoalaw.com/board-member-duties-and-liabilities-in-colorado-owner-associations/>

Please review the site.

The position you put another Director into when you "order" or "demand" that they do something that, in good faith, they believe conflicts with their duties or interpretation of their duties, requires them to choose between following an unethical, unreasonable, improper, or even illegal directive - which could cause them liability further down the road if they did not record their opposition - in the meeting minutes. You are disallowing such record-keeping, which is a serious issue, at least conceptually. You must allow that dissent to be recorded, particularly when a reasoned argument for the dissent has been given, and you literally offer no documentation of weighing of the pros and cons of the decision, or, in our case, even the slightest rationale as for why the decision benefits the community.

So far, you've only stated, vaguely, that you are "forced" into this arrangement of setting up a new gmail account. You've claimed that you cannot use the delegate accounts I created for you (that you refused to create on your own) because of an issue with "trust" because I once filed litigation against the Association. I would encourage you to re-read the Settlement Agreement of 6/17/21 - because that agreement specifically talks about neither party putting into question the right of the other to defend their original position.

But, secondly, I spoke with David Donnelly last week about this issue. He's encouraged each of you to reach out to him, or to send a group email. I will do that next if we cannot have a discussion.

The problem is that neither of you (and as a result, many in this community) understand that CCIOA only has one possible way of being enforced - private lawsuit. So, if a Board or Board Members are not following the law, or taking actions that are not compliant, a homeowner is the only party with standing to do anything about it. There is no state agency, law enforcement, or in most cases, even an Attorney General who will take action when matters are not criminal.

Therefore, to portray those who use litigation are following, once again, a duty - that they themselves get to decide whether it rises to the occasion, and whether all other means of dispute resolution have been exhausted. The Larimer District Court confirmed that I did, in fact, bring the suit in good faith. The ruling on Motion to Dismiss rested primarily on whether it was filed 3 days late - either based upon Director Hammond's 5/28/19 email, or the recording of his claims on 6/4/19, or when he made it an Association matter on 6/6/19. While the 6/4 recording was known to POHOA counsel, they prevented it's disclosure to the court - until after the dismissal. This is partially why the court did NOT award full legal fees - and it's in the records of the case.

Therefore, I find it politically cunning, but also offensive that you would raise these issues at an open meeting. If anything, the fact that I would put a target on my back and endure years of retaliation is a reason to trust that I will not bend my ethics or integrity, putting my personal interest above that of the Association. You literally have it backwards.

So, going forward, I simply ask that you define exactly how any homeowner or Director should properly engage any formal written process when they feel the Board or any Director is non-compliant with the documents or any law. It cannot be that for performing a duty in good faith, they should have to endure this retaliation. And, it may be worth

your time to consider the implications of Anti-SLAPP legislation. Mr. Donnelly studied under the professor that wrote the backbone of those laws, and is quite familiar with the approach of using threats and intimidation when a homeowner or Director publishes their dissent. New case law, and in particular related cases that rose to the California Supreme Court will likely have bearing on how the state and US Circuit Courts rule on such cases in the future.

In short, homeowners and Directors have a right to voice their good faith dissent, and publish the information. Trying to define such free speech as "harassment" or "defamation" (two popular approaches by Colorado HOA attorneys) may cross lines into Anti-SLAPP territory.

I urge you to contact Mr. Donnelly, or he'd be happy to participate in a group email to go over the topic. I'd like your agreement before setting that up.

Sincerely,

Andy

On Tue, Aug 16, 2022 at 8:35 PM Andy Mowery <[pohoaandy@gmail.com](mailto:pohoaandy@gmail.com)> wrote:

Lora,

I'll be sending the password for the account [poudreoverlookhoa@gmail.com](mailto:poudreoverlookhoa@gmail.com) via USPS Certified Mail, but won't be able to go into the post office until Friday. I'm literally working 7am-9pm in Denver the next two days. I've made a backup of both the gmail and google drive, which can be downloaded until next Monday. In fact, it would be a good idea to consider setting up the automatic backup every 2 months that is available - on any and all accounts. It's a good security protocol in case accounts are lost - it happens every day across the planet, and we should take security seriously.

I don't agree with creating a new account, but clearly, even prior to a vote, you already decided that you were going to avoid transparency by doing business from email accounts for which you clearly have no intention of disclosing. If we received legal advice telling us to do so (as inferred from Sara Young's comments in May/June), it would be a good idea to verify with that source, and perhaps get a second opinion.

My position is that all emails should be kept. There's not a good digital storage reason not to, as free storage is sufficient for this size organization for many years. When we deliberately delete emails, it will always raise questions about and sometimes create legal liability. I understand what you are saying about casual "discussions", but think of it this way - if the conversation is private/casual, it shouldn't be done on the business email.

The reason why I believe the discussions about any motion/issue/vote should always be preserved is because it is valuable to future Directors to see what has been hashed out previously, and what citations, sources, and experts weighed in. Sometimes, revisiting old decisions reveals a stone left unturned, or a perspective left out of consideration.

And, as I've said repeatedly, in 2021, we paid twice for the same legal advice on RV parking - and got polar opposite opinions. If the issue was settled in January, we should not have had a forgetful CAM (Theresa), who then had the freedom to create legal expenses on her own because she couldn't remember what happened 9 months before.

For whatever reason, you are among those who consider it a better practice to delete everything. Look at the exchange with Maryann Goyn and Jennifer Hutchinson from January of 2020 (full context). They were contemplating new policy - and had difficulty recalling or finding documentation from less than a year before.

Anyways, in the meantime, I've set up forwarding from [poudreoverlookhoa@gmail.com](mailto:poudreoverlookhoa@gmail.com) so that you don't miss any emails before you log in, once you receive the password. I intend no inconvenience to anyone.

That said, I look forward to how you plan to navigate digital security going forward. If you think changing the email address or account benefits the association (the actual owner of these accounts), make your case. So far, you've only stated that you have the votes - which may be true, but it would be better if this was a rational choice.

Making me the scapegoat and claiming you had no other options isn't fair or accurate. So, please don't make that your narrative.

In the meantime, if you could please commit to not deleting any emails until we have a policy on the matter that is clear and straightforward, I think that is fair.

When you get the code, please send it to me so the forwarding is operational.

Sincerely,

Andy

On Tue, Aug 16, 2022 at 11:13 AM Poudre Overlook at FtC <[atftcpoudreoverlook@gmail.com](mailto:atftcpoudreoverlook@gmail.com)> wrote:

Hi - I just sent invites to the both of you as delegates of the new poudre overlook HOA of Fort Collins email account.

My email for PO HOA business is [lb4pohoa@gmail.com](mailto:lb4pohoa@gmail.com). Please use this email only for HOA business.

I am writing a draft letter to go into the mailings of the policies. When I get if finished, I'll send for comments.

Lora